160 U.S. 531

TRANSCRIPT OF RECORD.

160-531

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~360~~. 79

ELLA L. LAING, PLAINTIFF IN ERROR,

vs.

THOMAS G. RIGNEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JANUARY 8, 1892.

(14,961.)

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INDEX.

	Original.	Print
Writ of error	*a*	1
Caption	*d*	2
Remittitur	*e*	2
Transcript on appeal	1	3
Statement required by rule 41	1	3
Summons with notice	4	3
Amended complaint	5	4
Exhibit "A"—Bill for divorce, filed April 23, 1883, in the court of chancery of New Jersey	12	7
"B"—Answer to bill for divorce, filed August 4, 1883, in the court of chancery of New Jersey	17	10
"C"—Supplemental bill for divorce, filed May 18, 1886, in the court of chancery of New Jersey	19	12
"D"—Order for publication, filed May 2, 1887, in the court of chancery of New Jersey	22	14
"E"—Order of reference, filed May 19, 1887, in the court of chancery of New Jersey	24	14
"F"—Master's report, filed June 11, 1887, in the court of chancery of New Jersey	24	15
"G"—Final decree, filed June 13, 1887, in the court of chancery of New Jersey	26	16

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	Original.	Print.
Amended answer	28	17
Case and exceptions	33	20
Testimony of Ella L. Rigney	33	20
Affidavit of service of supplemental bill, &c	34	20
Admission as to non-payment of costs, &c	35	21
Plaintiff rests	35	21
Amended final decree in court of chancery of New Jersey	36	21
Testimony of Daniel M. Dickenson	40	23
Rule 216, as to revivor of suit	47	28
Defendant rests	48	28
Testimony of J. Augustus Fay	49	29
Testimony of Ella L. Rigney (recalled)	52	31
Plaintiff rests	53	31
Testimony of Hamilton Wallis	53	31
Notice of motion to amend decree in court of chancery of New Jersey	53	31
Notice of petition to strike out amended decree, &c	55	32
Affidavit of Joseph A. Shoudy	61	36
Affidavit of Wm. D. Edwards	63	37
Notice of motion to amend decree, &c	69	40
Affidavit of James P. Northrop	70	41
Order denying motion to vacate amended decree, &c	72	42
Plaintiff's requests for findings of fact	73	42
Plaintiff's requests for conclusions of law	79	46
Findings of fact	81	47
Conclusions of law	84	48
Decree	85	49
Plaintiff's exceptions to findings and conclusions	86	49
Notice of appeal to general term	93	53
Opinion in special term	94	53
Decree in general term	98	55
Opinion in general term	99	56
Notice of appeal to court of appeals	105	59
Clerk's certificate	106	60
Order for judgment on remittitur	107	60
Judgment on remittitur	110	61
Assignment of errors	113	62
Bond	116	62
Clerk's certificate	120	64
Affidavit of service of citation	122	65
Citation	123	65

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings and also in the rendition of the judgment in a plea which is in the said supreme court, before you or some of you, said judgment having been affirmed by the court of appeals of the State of New York, being the highest court of the State of New York in which a decision could be had in said suit between Ella L. Rigney, now Ella L. Laing, plaintiff, and Thomas G. Rigney, defendant, and the record having been remitted from said court of appeals to your court, wherein was drawn in question the validity of a statute or an authority exercised under the United States and the decision was against its validity, or wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Ella L. Laing, as by her complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and
b openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this twenty-sixth day of December, in the year of our Lord one thousand eight hundred and ninety-one.

.[Seal of U. S. Circuit Court, South Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York.

The foregoing writ is hereby allowed.
December 26th, 1891.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

c [Endorsed:] Ella L. Laing, formerly Ella L. Rigney, *vs.* Thomas G. Rigney. Writ of error.

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b openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

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c [Endorsed:] Ella L. Laing, formerly Ella L. Rigney, *vs.* Thomas G. Rigney. Writ of error.

d New York Court of Appeals.

ELLA L. RIGNEY, Plaintiff and Respondent,
against
THOMAS G. RIGNEY, Defendant and Appellant.

Case on Appeal.

Wing, Shoudy & Putnam, attorneys for respondent; Marsh, Wilson & Wallis, attorneys for appellant.

e Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 6th day of Oct., in the year of our Lord one thousand eight hundred and ninety-one, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.

GORHAM PARKS, *Clerk.*

Remittitur, October 7th, 1891.

f ELLA L. RIGNEY, Resp'd't,
ag'st
THOMAS G. RIGNEY, App'l'nt.

Be it remembered that on the 14th day of September, in the year of our Lord one thousand eight hundred and eighty-nine, Thomas G. Rigney, the appellant in this action, came here into the court of appeals, by Marsh, Wilson & Wallis, his attorneys, and filed in the said court a notice of appeal and return thereto from an order of the general term of the supreme court of the State of New
g York, and Ella L. Rigney, the respondent in said action, afterwards appeared in said court of appeals, by Wing, Shoudy & Putnam, her attorneys; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Mr. Hamilton Wallis, of counsel for the appellant, and by Mr. J. A. Shoudy, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the general term of the supreme court appealed from in this action be, and the same is hereby, reversed and the judgment entered on the decision of the special term affirmed, with costs.

And it was also further ordered that the record aforesaid
h and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said order be reversed, &c., as aforesaid.

And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into

the said supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Oct. 7th*, 1891.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] GORHAM PARKS, *Clerk.*

1–3 *Statement Required by Rule* 41.

This action was begun by Ella L. Rigney, as plaintiff, by the service of the summons herein on Thomas G. Rigney, the defendant, August 4th, 1887.

The complaint was served August 25th, 1887, and the answer was served November 1st, 1887.

The amended complaint was served December 3d, 1887, and the amended answer was served January 6th, 1888.

There has been no change of parties during the pendency of the action.

4 Supreme Court of the State of New York, Trial to be had in the County of New York.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Summons, with Notice.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Aug. 4, 1887.

JOHN C. F. GARDNER,
Plaintiff's Attorney; Office, No. 52 Broadway, New York City.

Post-office address, No. 52 Broadway, New York city.

Notice.

Take notice, that upon your default to appear, or answer the above summons, judgment will be taken against you for the

5 sum of five thousand two hundred and five and $\frac{94}{100}$ dollars, with interest from June 11, 1887, and with costs of this action.

JOHN C. F. GARDNER,
Plaintiff's Attorney.

Supreme Court, Place of Trial City and County of New York.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Amended Complaint.

The plaintiff, by Wing, Shoudy & Putnam, her attorneys, for an amended complaint herein against the defendant, alleges:

First. That the plaintiff, whose maiden name was Ella L. Patten, was lawfully married to the defendant, Thomas G. Rigney, on the 12th of February, 1873, at Christ church, in the city of Poughkeepsie, in the State of New York, after which the plaintiff and defendant remained inhabitants of the State of New York, living together as husband and wife, until the month of January, in the year 1877, when they both removed from the State of New York to the city of Elizabeth, in the State of New Jersey, where they continued to reside and live together as such husband and wife until the defendant left the said State of New Jersey at the time and in the manner hereinafter stated.

6 Second. That while the plaintiff and defendant so lived together as husband and wife, there was born to them two children, whose names and ages are as follows: Ella Chloise Rigney, born January 2, 1874, and Thomas Dwight Rigney, born October 15, 1876, which children are still living and in the care and custody of this plaintiff.

Third. That on or about the 31st day of October, 1882, the said Thomas G. Rigney began to absent himself from the city of Elizabeth and return thereto only at unfrequent intervals and for a brief stay, and on or about the first day of January, 1883, he wholly ceased to provide for the support and maintenance of the plaintiff and her said children, except that on the 18th day of March, 1883, the defendant (under the pretext that he was desirous of taking the son of the plaintiff, Thomas Dwight Regney, to church,) left the house where they had resided, at No. 460 Monroe avenue, in the city of Elizabeth, with the said child and took him to the city of New York by the Sunday morning train, and thereafter kept him in the city of New York until possession of said child was reclaimed by the plaintiff on or about January 22d, 1884, and that from that time the said defendant wholly ceased to visit the plaintiff, and wholly abandoned her and ceased to provide for her support and maintenance, or for the support and maintenance of their said daughter, and on the 20th day of March, 1883, the defendant publicly advertised in the Elizabeth Daily Journal that he would not provide for nor be responsible for the support of the plaintiff and her said daughter, and caused like notices to be served on all the merchants and dealers with whom she had been accustomed to trade.

The plaintiff further states that the said defendant is by occupation a stock broker, and is the owner of a seat in the
7 New York stock exchange, the value of which is about $30,000 as plaintiff is informed and believes, and that he has for a number of years been doing a large business as a stock broker, and has accumulated large means.

Fourth. The plaintiff further alleges on information and belief, that the defendant, disregarding the solemnity of his marriage vows, was guilty of adultery at divers times and at various places after the said marriage, and particularly with one Hattie Gebhard, in the month of December, 1884, and in October, November and December, 1885; and the plaintiff further says that such adultery was committed without her consent, connivance, privity or procurement; that five years have not elapsed since the discovery of the adultery; and that she has not voluntarily cohabited with the defendant since the discovery thereof.

Fifth. The plaintiff further alleges that after her abandonment by the defendant as hereinbefore stated and after the discovery of the said acts of adultery, the plaintiff, while being a resident of the State of New Jersey, commenced a suit in the court of chancery of New Jersey, and filed a bill in said court for an absolute divorce on the 23d of April, 1883, a copy of which bill is hereunto annexed, marked Exhibit "A."

Sixth. Plaintiff alleges on her information and belief that all the allegations in the said bill contained in respect to the misconduct of the defendant are true as therein alleged.

Seventh. Plaintiff further alleges that process by *subpœna ad respondendum* was duly issued out of the court of chancery on or about the 24th day of April, 1883, directed to the defendant in due
8 form requiring the defendant to appear and answer said bill. That as the defendant could not be found within the State of New Jersey, an order for the publication of the said process and for the service thereof by publication was duly issued out of said court according to the laws of said State and the rules and practice of said court, and that notice thereof was duly and personally served upon the defendant in the city of New York, according to the laws of said State and the rules and practice of said court.

Eighth. That thereafter and on or about the 4th day of August, 1883, the said defendant duly appeared in said action by Messrs. Wallis & Edwards, his attorneys, thereunto duly authorized, who filed with the clerk of said court a notice of appearance, and the said defendant thereupon caused to be filed with the said clerk his answer to the said bill, a copy of which is hereunto annexed, marked Exhibit "B."

Ninth. That on or about the 18th day of May, 1886, the plaintiff, in accordance with the rules and practice of the said court of chancery, duly filed in said court a supplemental bill in the said suit, a copy of which is hereto annexed, marked Exhibit "C."

That by the laws of the State of New Jersey and the rules and practice of said court, the plaintiff was at liberty at any time to file a supplemental bill in the said suit, stating any facts relevant to

the matters alleged in the original bill which came to her knowledge after the filing of the original bill, and that such supplemental bill was considered according to said laws and rules of practice to be a part of said original suit.

That on or about the 2d day of May, 1887, an order was made by the said court, a copy of which is hereto annexed, marked Exhibit "D."

9 That thereafter and on or about the 4th day of May, 1887, a copy of the said supplemental bill and the order for publication thereof were duly served upon the defendant in the city of New York by delivering said copies to him personally.

The defendant having made default in answering the said bill, it was thereupon ordered that the bill be taken *pro confesso* against the defendant, and an order of reference was thereupon made, a copy of which is hereto annexed, marked Exhibit "E."

That thereupon the special master named in said order proceeded to take proof of the facts therein alleged and did take proof there*for*, and on or about June 11, 1887, filed his report, a copy of which is hereto annexed, marked Exhibit "F."

Tenth. That thereafter and on or about the 13th day of June, 1887, a final decree was duly made and entered in said suit by the said court of chancery, a copy of which is hereto annexed, marked Exhibit "G." And the plaintiff alleges that the said court of chancery had jurisdiction of the person of the defendant and of the subject-matter of the suit, and that all proceedings therein were regular and in due form of law according to the practice of the said court, and that said decree has ever since remained and still remains in full force, unreversed and unrevoked.

Eleventh. The plaintiff further alleges on information and belief that the defendant has since the making of the said decree—acting upon the theory of the validity and binding force thereof—and on the 18th day of September, 1887, married a woman named Abbie Ahern, with whom he is now living as his wife at the Grand Central hotel, in the city of New York; and the defendant claims

10 to have been justified in contracting and entering into such marriage relation by virtue of the said decree. That said marriage was solemnized in the State of New Jersey, and also in the State of New York.

Twelfth. The plaintiff further alleges that the defendant has not complied with the terms of the said decree in any respect, and has wholly failed to pay the amount of alimony directed and adjudged to be paid by the decree or the costs of the said suit, which were duly taxed and adjusted and amounted to the sum of $93.71 and the counsel fee of $150 or any part thereof, and there is now due and unpaid according to the terms of the said decree to the plaintiff alimony at the rate of $100 per month from the 23rd day of April, 1883, to the 13th day of June, 1887, amounting to the sum of $4,963.33 and the said costs and counsel fee; and the sum of $45 per week from the said 13th day of June, 1887, up to the present time.

Wherefore plaintiff demands judgment against the defendant as follows:

1. That the aforesaid decree of the court of chancery of the State of New Jersey may be enforced against the defendant by this court with like force and effect as if the same was a judgment of this court, and that plaintiff may have all the rights and remedies for the enforcement thereof provided by the laws of the State of New York and the rules and practice of this court in such cases.

2. That plaintiff may have judgment for the sum of $5,207.04 alimony, counsel fee and costs due under the said decree on the 13th day of June, 1887, together with interest thereon from that date, besides the costs and disbursements of this action.

11 3. That permanent alimony may be awarded and adjudged to be paid to the plaintiff by the defendant from the 13th day of June, 1887, continuously, together with interest upon each weekly payment from the time the same became due, and that the defendant be required to give security for the payment thereof.

4. That plaintiff have such further or other order, judgment or relief as shall be proper and according to the rules and practice of this court and the laws of this State.

WING, SHOUDY & PUTNAM,
Attorneys for Plaintiff, 45–49 *William St., N. Y. City.*

STATE OF NEW YORK, }
City and County of New York, } ss.:

Ella L. Rigney, being duly sworn, says: I am the plaintiff named in the foregoing amended complaint. I have heard the same read and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

ELLA L. RIGNEY.

Sworn to before me this 3rd day of December, 1887.
[L. S.] CHARLES C. BURLINGHAM,
Notary Public, N. Y. Co.

12 EXHIBIT "A."

Bill for Divorce. Filed April 23, 1883. *J. Augustus Fay, Jr., Sol'r.*

In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't, }
and
THOMAS G. RIGNEY, Def't. }

To his honor Theodore Runyon, chancellor of the State of New Jersey:

Humbly complaining, showeth unto your honor your oratrix, Ella L. Rigney, of the city of Elizabeth, in the county of Union and

State of New Jersey, that her maiden name was Ella L. Patten, and that your oratrix was lawfully joined in the bands of matrimony to her present husband, Thomas G. Rigney, on the twelfth day of February, in the year eighteen hundred and seventy-three, at Christ church, in the city of Poughkeepsie, in the State of New York, after which your oratrix was and remained an inhabitant of the State of New York with her said husband until the month of January, in the year eighteen hundred and seventy-seven, when your oratrix removed with her said husband from the State of New York to the city of Elizabeth, in the county of Union and State of New Jersey, where she now resides and has resided ever since January, eighteen hundred and seventy-seven, and the said Thomas G. Rigney has also been an inhabitant of the said city of Elizabeth from January, eighteen hundred and seventy-seven, at number four hun-
13 dred and sixty Monroe avenue (the present residence of your oratrix), until the eighteenth day of March, eighteen hundred and eighty-three, when he left your oratrix at the city of Elizabeth aforesaid and went to the city of New York, where your oratrix is informed and believes he now is. And your oratrix further showeth unto your honor, that the said Thomas G. Rigney is now, she believes, absent from the State of New Jersey, but that the legal residence of said Thomas G. Rigney is still at said city of Elizabeth. And your oratrix further showeth unto your honor that the said Thomas G. Rigney, since his said marriage with your oratrix, and on different days of the months of January, February and March, in the year eighteen hundred and eighty-three, at the city of New York and at divers other times, wickedly disregarding the solemnity of his vows and the sanctity of the marriage state, at a notorious house of ill-fame and prostitution, situate at number one hundred and twenty-eight Canal street, in said city of New York, committed adultery with one or more inmates of said house of prostitution, whose names are at present unknown to your oratrix.

And your oratrix further showeth unto your honor, that the said Thomas G. Rigney, on the twelfth day of March, in the year eighteen hundred and eighty-three, at the said city of New York, in said house of ill-fame and prostitution, known as number one hundred and twenty-eight Canal street, wickedly disregarding the solemnity of his marriage vows, committed adultery with an inmate of said house of ill-fame, whose name is unknown at present to your oratrix except that she is sometimes called "Emma." And your oratrix further shows unto your honor, that by means of the said several premises above set forth, the domestic peace and happiness of your oratrix has been entirely destroyed. And your oratrix fur-
ther showeth unto your honor that she has two children by
14 her said husband, Thomas G. Rigney, whose names and ages are as follows, to wit: Ella Chloise Rigney, born January second, in the year eighteen hundred and seventy-four, and Thomas Dwight Rigney, born October fifteenth, in the year eighteen hundred and seventy-six.

And your oratrix further showeth unto your honor that since the thirty-first day of October, in the year eighteen hundred and eighty-

two, the said Thomas G. Rigney has most of the time been absent from the city of Elizabeth, and since the first day of January last past, has failed to provide the necessaries for the support and maintenance of your oratrix and her said children, except that upon the eighteenth day of March last, the said Thomas G. Rigney, under the pretext that he was desirous of taking the son of your oratrix, Thomas D. Rigney, to church, left the house of your oratrix at No. 460 Monroe avenue, in the city of Elizabeth, with the child, and took him to the city of New York by the Sunday morning train, and has since kept the said child at the residence of Thomas Rigney, the father of your oratrix's said husband, as she is informed and believes to be true. And that he, said husband, since the last-mentioned date has not been seen by your oratrix, nor has she seen her said child. And your oratrix further showeth unto your honor that the said Thomas G. Rigney, by an advertisement in the Elizabeth Daily Journal, on the twentieth day of March last and by notices of said date sent to all the dealers in Elizabeth, with whom the household bills had for years been contracted, absolutely refused to provide for or be responsible for the support of your oratrix or her remaining child, Ella Chloise Rigney, and prevented any credit being extended to your oratrix on his account.

And your oratrix further showeth unto your honor that
15 the said Thomas G. Rigney is by occupation a stock broker, and is the owner of a seat or share in the New York stock exchange, the value of about thirty thousand dollars, and has been several years doing a large and lucrative business as such broker, and that he has accumulated considerable means, and in October last was the owner of stock in the Iron Steamboat Company, and had several thousand dollars to his credit in banks in the city of New York, which stock was productive and amounted in value to three thousand dollars, besides, as he informed your oratrix, other stocks or bonds and franchises in Chicago and Boston. And your oratrix further showeth unto your honor that she has not cohabited with her said husband since the discovery by her of the said acts of adultery charged as above. In tender consideration whereof and to the end that the said Thomas G. Rigney may true, full and perfect answer make to the matters and things herein charged and set forth as fully as if the same were herein again repeated and he interrogated thereto, and particularly that he may set forth and discover whether your oratrix and the said Thomas G. Rigney were not joined in wedlock as aforesaid; and whether since his marriage with your oratrix he has not committed adultery, and with whom, and at what time and place, and under what circumstances, or how otherwise, and particularly in one or more of the months of January, February and March, in the year eighteen hundred and eighty-three, aforesaid, at the house of ill-fame and prostitution in the city of New York, situate at number one hundred and twenty-eight Canal street, with one or more of the inmates or frequenters of said house of ill-fame, whose names are unknown to your oratrix, except as above set forth; and that the marriage between your ora-

trix and the said Thomas G. Rigney may be dissolved ac-
16 cording to the statute in such case made and provided; and that the custody of the said children of your oratrix by said marriage, to wit, the custody of Ella Chloise Rigney and Thomas Dwight Rigney, may be awarded to your oratrix; and that the said Thomas G. Rigney may be compelled by the order and decree of this honorable court to provide for and suitably support your oratrix and her said two children; and that your oratrix may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant to your oratrix the State's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Thomas G. Rigney, commanding him on a certain day and under a certain penalty therein to be expressed personally to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to, abide by and perform such order, direction and decree as to your honor shall seem meet and as shall be according to the statute in such case made and provided.

J. AUGUSTUS FAY, JR.,
Solicitor and of Counsel with Complainant.

STATE OF NEW JERSEY, *Union County,* } *ss.:*

Personally appeared before me, the subscriber, a master in chancery in and for said State, Ella L. Rigney, the complainant in the foregoing bill, and who, being by me duly sworn, saith that the bill of complaint is not made by any collusion between her and the defendant in the said bill for the purpose of dissolving their marriage, but in truth and good faith, for the causes set forth in the bill of complaint.

ELLA L. RIGNEY.

17 Sworn and subscribed before me this 23rd day of April, A. D. 1883.

EDWARD S. ATWATER,
Master in Chancery of New Jersey.

EXHIBIT "B."

Answer. Filed Aug. 4, 1883.

The answer of Thomas G. Rigney, defendant, to the bill of complaint of Ella L. Rigney, complainant.

This defendant answering admits that he was married to the complainant at the time and place alleged in said bill, and that said complainant was and remained an inhabitant of the State of New York and resided there with this defendant until the month of January, A. D. 1877, when they removed to the city of Elizabeth, in this

State, where said complainant now resides and has resided ever since, and that this defendant resided with his wife at said city of Elizabeth from said month of January, A. D. 1877, to the eighteenth day of March, A. D. 1883, when he came to the city of New York to reside, after requesting her to come with him, which she refused to do. This defendant further answering denies that he ever did on different days or on any day in the months of January, February, or March, A. D. 1883, either at the house known as number one hundred and twenty-eight Canal street, in the city of New York, or elsewhere, commit adultery with any person or persons whomsoever, and denies that he did on the twelfth day of March, A. D. 1883, or at any other time at the city of New York or elsewhere, commit adultery with an inmate of a house of ill-fame, situated at number one hundred and twenty-eight (128) Canal street, in said city of New York, sometimes called "Emma," or with
18 any other person or persons, and he says that the charge of adultery made against him in the said bill are wholly untrue and without foundation. This defendant admits that two children have been born of said marriage, and that their names and ages are correctly stated in said bill. This defendant denies that since the first day of January last past he has failed to provide the necessaries for the support and maintenance of his said wife and her children, or any of them, but insists that since their marriage — has transferred to his said wife various stocks in incorporated companies worth not less than seven thousand dollars, the greater portion whereof he verily believes she now has in her possession or under her control. Said defendant admits that his son, Thomas Dwight Rigney, has been under his care and custody since about the eighteenth day of March, A. D. 1883, but denies that he has ever refused to allow said complainant to visit their said son. This defendant admits that he is by occupation a stock broker, and that he is the owner of a seat in the New York stock exchange, but says that the same is not worth over twenty thousand dollars. This defendant denies that he is doing a large or lucrative business as such broker, but insists that he only earns about enough from month to month to keep himself and son comfortably. He denies that he has accumulated any means, or that he is the owner of any stock or bonds or money, or other property whatsoever, except his seat in the stock exchange and the furniture at the house number four hundred and sixty Monroe avenue, in the city of Elizabeth, now occupied by his wife; which furniture he has been informed and believes his said wife claims to own as her own property. All which matters and things this defendant is ready to aver, maintain and prove when and where this honorable court shall direct, and humbly
19 prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WALLIS & EDWARDS,
Solicitors for and of Counsel with Defendant.

EXHIBIT "C."

Supplemental Bill. Filed May 18, 1886.

To his honor Theodore Runyon, chancellor of the State of New Jersey:

Humbly complaining, showeth unto your honor your oratrix, Ella L. Rigney, of the city of Elizabeth, in the county of Union and State of New Jersey, that on or about the 23rd day of April, eighteen hundred and eighty-three, your oratrix exhibited her original bill of complaint in this honorable court against Thomas G. Rigney, the defendant hereinafter named, as defendant, thereby stating that the said defendant had been guilty of adultery and praying for a divorce *ex vinculo*, and the custody of the two children of your oratrix, named respectively Ella Chloise Rigney and Thomas Dwight Rigney, together with alimony and suitable maintenance for your oratrix and her said children. And your oratrix further shows that the said defendant Thomas G. Rigney, having been duly served with an order to plead, answer or demur under the rules of this court, appeared to the bill of your said oratrix and put in his answer thereto, whereby he admitted his marriage with your oratrix and the ages and names of the children as set out in the original bill, but denied the charge of adultery as alleged by your oratrix, and your oratrix further shows that no testimony has as yet been taken as to the said charge of adultery, and none in the cause except in a collateral proceeding for the custody of one of the children, all of which by the said bill, answer and proceedings, now remaining as of record in this honorable court, reference being thereunto had, will more fully appear. And your oratrix further shows that at the time of the filing of the original bill she had the custody and care of one of the children, to wit: Ella Chloise Rigney, but that since the 22nd day of January, in the year eighteen hundred and eighty-four, she has had the care, maintenance and custody of both children and has supported, maintained and educated both of them without any assistance of or from their said father the defendant, who during the entire period has, as your oratrix — informs and believes, remained in the city of New York. And your oratrix further shows by way of supplement, that your oratrix has discovered, as the fact is, that since the filing of the original bill, the said defendant, Thomas G. Rigney, on different days in each and every month, from the month of August, eighteen hundred and eighty-four, during the year eighteen hundred and eighty-four, and in each and every month on different days thereof during the year eighteen hundred and eighty-five, and likewise on different days of the months of January, February, March and April in the year eighteen hundred and eighty-six, wickedly disregarding the solemnity of his vows and the sanctity of the marriage state, committed adultery with one Hattie Gebhard, at her rooms in Forty-third street, near Seventh avenue, in the city of New York, and after her removal therefrom at her rooms at number 357 West 59th street,

in the city of New York. And your oratrix further shows, that the said defendant, Thomas G. Rigney, has maintained the establishment at No. 357 West 59th street for the past fifteen months, and openly lives with the said Hattie Gebhard as her husband, expending
21 large sums of money for rent, food, clothing and necessaries for said Hattie Gebhard, and occupying with her her apartment at night. And that prior to her removal with him, the said defendant, to their present residence, to wit: number 357 West 59th street, they, the said Hattie Gebhard and the said Thomas G. Rigney, during the months of August, September, October, November and December, in the year eighteen hundred and eighty-four, on divers different days in each and every month committed adultery at the room of said Hattie Gebhard, in 43rd street, near 7th avenue. And your oratrix further shows that said defendant is a member and has a seat in the New York stock exchange, and is in active business, in the receipt of a large income, and has funds invested in valuable stocks and first-class mortgage securities. And your oratrix further shows that by means of the premises her domestic peace and happiness have been entirely destroyed. In tender consideration whereof, and to the end that the said defendant, Thomas G. Rigney, may answer this supplemental bill and that your oratrix may have the same relief against the said Thomas G. Rigney as she might have had if the facts hereinbefore stated and charged by way of supplement had been stated in the original bill of your oratrix, and that the marriage between your oratrix and the said Thomas G. Rigney may be dissolved, according to the statute in such case made and provided, and that the custody of the two children, the issue of said marriage, to wit: Ella Chloise Rigney and Thomas Dwight Rigney, may be awarded to your oratrix, and that a suitable allowance may be made to your oratrix as alimony, and to enable her to support, maintain and educate her said children, and that your oratrix may have such other or further relief in the premises as the circumstances of her case may require and to your
22 honor shall seem meet, may it please your honor, the premises considered, to grant to your oratrix the State's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Thomas G. Rigney, commanding him, on a certain day and under a certain penalty therein to be expressed, to be and appear before your honor in this honorable court, then and there to answer the premises and to stand to, abide by and perform such order, direction and decree as to your honor shall seem meet and as shall be according to the statute in such case made and provided.

J. AUGUSTUS FAY, JR.,
Solicitor for and of Counsel with Complainant.

STATE OF NEW JERSEY, } ss:
Union County, }

Ella L. Rigney, the complainant in the foregoing supplemental bill, being duly sworn, says that her complaint in said bill is not

made by any collusion between her and the defendant in said bill for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in the original bill and this supplemental bill of complaint.

ELLA L. RIGNEY.

Sworn and subscribed before me this 21st day of April, A. D. 1886.
E. M. WOOD, *M. C. C.*

EXHIBIT "D."

Order for Publication. Filed May 2, 1887.

The complainant having filed her supplemental bill in the above cause, and process of subpœna having been issued and re-
23 turned according to law, and it appearing that the defendant does not reside in the State of New Jersey, but out of the same, and it further appearing that the said defendant appeared and answered the original bill, and that the issues raised thereby are still undetermined, the said original bill having been filed to procure an absolute divorce, together with the custody of the children and an allowance for alimony, and the supplemental bill having been filed setting forth other charges of the same character, for which the same relief is prayed, and it further appearing by the testimony already taken in proceedings on the original bill that the defendant, Thomas G. Rigney, resides out of the State of New Jersey, and that process could not be served upon him,

It is, on this twenty-ninth day of April, one thousand eight hundred and eighty-seven, on motion of J. Augustus Fay, Jr., solicitor of the complainant,

Ordered, that the said absent defendant do appear and plead, demur or answer to the complainant's supplemental bill, on or before the eighteenth day of May next, or that in default thereof such decree be made against him as the chancellor shall think equitable and just.

And it is further ordered that a copy of this order with a certified copy of said supplemental bill shall, within five days hereafter, be served upon the said absent defendant, personally, or in default of such service, that notice of this order be published within the said five days in the Central New Jersey Herald, a newspaper printed at Elizabeth, in this State, and continued therein for two weeks successively, at least once in every week, and that a copy thereof be also mailed, within the same time, to the said absent defendant, directed to his post-office address, if the same can be ascertained.

THEODORE RUNYON, *C.*

24 EXHIBIT "E."

Order of Reference. Filed May 19, 1887.

Upon opening this matter to the court, by J. Augustus Fay, Jr., of counsel with the complainant, and it appearing that due notice

of the order of this court, made on the twenty-ninth day of April last past, directing the defendant to appear and answer the said bill on or before the eighteenth day of May, then next, has been duly served together with a certified copy of the supplemental bill as in said order, and by the rules of this court, directed and prescribed; and that the said defendant has not answered to the same within the time limited by law and said order, but has wholly failed and neglected so to do, it is thereupon, on this nineteenth day of May, A. D. eighteen hundred and eighty-seven,

Ordered, that it be referred to Patrick H. Gilhooly, Esq., one of the special masters of this court, to ascertain and report as to the truth of the allegations of the said bill, and his opinion thereon; and that the complainant proceed to take depositions and other evidence before said special master to substantiate and prove the allegations in said bill, and to bring on the hearing of the cause *ex parte;* and that the said master do return, together with his report, and as part thereof, such deposition and other evidence as may be taken before him in pursuance of this order.

ALEX. T. McGILL, JR., *C.*

EXHIBIT "F."

Master's Report. Filed June 11, 1887.

In pursuance of an order of this court made in the above
25 cause, bearing date on the nineteenth day of May, A. D. eighteen hundred and eighty-seven, whereby it was referred to the subscriber, one of the special masters of this court, to ascertain and report as to the truth of the allegations of the complainant's bill and supplemental bill, and his opinion thereon, I do find and report that I have been attended by J. Augustus Fay, Jr., solicitor of said complainant, and in his presence I have taken the deposition of witnesses produced before me, and have examined into the matters thereby referred to me, and I do find and report that it is proved to my satisfaction from the said depositions that the complainant, whose maiden name was Ella L. Patton, and the defendant intermarried at Poughkeepsie, in the State of New York, on the 12th day of February, A. D. 1873; that the complainant has been a resident of the city of Elizabeth, in this State, since the year eighteen hundred and seventy-seven to the present time, and during the last-named period has continued an inhabitant of this State. And I do further report that it appears to my satisfaction from the said depositions, that the said defendant committed adultery with one Hattie Gebhard in the month of December, A. D. eighteen hundred and eighty-four, and in the months of October, November and December, A. D. eighteen hundred and eighty-five. And I do further — that I am of opinion that all material facts charged in said bill and supplemental bill are true, and that a decree of divorce should be made in this cause for the crime of adultery, pursuant to the prayer of said bill and supplemental bill.

Dated June 10, 1887.

PATRICK H. GILHOOLY,
Special Master.

26 EXHIBIT "G."

Final Decree. Filed June 13, 1887.

This cause coming on to be heard before the court of chancery of the State of New Jersey, in the presence of J. Augustus Fay, Jr., of counsel with the complainant, no one appearing for the defendant, and it appearing to the court, that the said complainant, on the twenty-third day of April, A. D. eighteen hundred and eighty-three, exhibited her bill of complaint in this cause to obtain a divorce from the bond of matrimony for the cause therein set forth, and did likewise on the eighteenth day of May, in the year eighteen hundred and eighty-six, file her supplemental bill in the same cause setting forth additional grounds and allegations of the same nature, and did swear that the said complaint was not made by any collusion between her and the said defendant for the purpose of dissolving the marriage between them, but in truth and good faith for the cause set forth in said bill and the supplemental bill; and it further appearing to the court that the defendant appeared and answered the original bill and admitted the truth of the bill in all its allegations, except as to the charge of adultery; and it further appearing that upon the filing of the supplemental bill the said defendant has not appeared, demurred, pleaded or answered to the same within the time limited by law and the order of this court for that purpose, and that the order of this court made on the twenty-ninth day of April, A. D. eighteen hundred and eighty-seven, together with a certified copy of the supplemental bill, was personally served upon the said defendant as by said order directed; and it *is* further appearing that by the order of this court made on the nineteenth day of May, A. D. eighteen hundred and eighty-seven,

27 it was referred to Patrick H. Gilhooly, Esq., one of the special masters of this court, to take the proofs and depositions offered by the said complainant in support of the allegations of the bill of complaint, and to report the same to this court, together with his opinion thereon; whereupon and upon reading the pleading and proofs in the cause, and the report of the said special master, dated June tenth, A. D. eighteen hundred and eighty-seven, from all of which it appears satisfactorily to the court, that the marriage between the said complainant, Ella L. Rigney, and the said defendant, Thomas G. Rigney, was solemnized and took place in the State of New York as alleged in the bill, and that the complainant was an actual resident of the State of New Jersey at the time of filing her bill of complaint, and at the time of the injuries complained of, and is still and has been since January, in the year eighteen hundred and seventy-seven, a resident of the State of New Jersey, and that the said defendant has been guilty of the crime of adultery charged against him in the said bill of complaint and the supplemental bill thereto, it is thereupon on this eleventh day of June, in the year eighteen hundred and eighty-seven, by his honor Alexander T. McGill, Junior, chancellor of the State of New Jersey, by virtue of the

power and authority of this court and of the acts of the legislature in such case made and provided, ordered, adjudged and decreed, that the said complainant, Ella L. Rigney, and the said defendant, Thomas G. Rigney, be divorced from the bond of matrimony for the cause aforesaid and the marriage between them is hereby dissolved accordingly, and the said parties and each of them are and is hereby freed and discharged from the obligations thereof.

And it is further ordered, adjudged and decreed, that the custody of Ella Chloise Rigney and Thomas Dwight Rigney, the two children, issue of the said marriage, be and the same is hereby
28 awarded to the complainant, Ella L. Rigney, their mother, absolutely.

And it is further ordered that alimony *pendente lite* be allowed at the rate of one hundred dollars per month from the filing of the bill up to the date of this order, and that from henceforth the said Thomas G. Rigney pay to the said Ella L. Rigney the sum of forty-five dollars per week, at the termination of each and every week from the date of this order, for her maintenance and support, and the support, maintenance and education of her said children, Ella Chloise Rigney and Thomas Dwight Rigney, and that the defendant pay to the complainant her costs of this suit to be taxed and the sum of one hundred and fifty dollars for counsel fee, and that the complainant have execution therefore, according to the practice of this court.

ALEX. T. McGILL, JR., *C.*

Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Amended Answer.

The above-named defendant, by Marsh, Wilson & Wallis, his attorneys, answers the amended complaint of the plaintiff herein, as follows:

29 He denies the allegations contained in the first and second paragraphs of said complaint.

He denies each and every of the allegations contained in the third paragraph of said complaint except as herein specifically admitted.

He admits that on or about the first day of January, in the year 1883, he removed from the city of Elizabeth, in the State of New Jersey, to the city and county of New York, and he alleges that at the time of such removal he requested the plaintiff to accompany him and to reside with him in said city of New York, and that after such removal he was, and for a long time continued to be, ready and willing to receive the plaintiff and his children, and to accommodate them in said city of New York; but he alleges that said plaintiff refused to accompany him to the city of New York, or to permit his children to accompany him to that place, and contrary to the wishes of this defendant, continued to reside at said Elizabeth.

This defendant admits that at the time stated in said complaint he took his son, Thomas Dwight Rigney, to reside with him in said city of New York, and he alleges that thereafter proceedings were regularly commenced by said plaintiff in the court of chancery of New Jersey in the suit in said complaint set forth, to compel this defendant to return his said son to said plaintiff, and that such proceedings were dismissed by said court of chancery, and his said son was by said court remanded to the care and custody of this defendant; but that afterwards, and notwithstanding said decision of said court, said plaintiff forcibly and secretly abducted and obtained possession of said son, and for a long time secreted him from this defendant, and still continues to keep said son from this defendant. That this defendant ceased to provide for or support said plaintiff only while she was living in a state of separation from this
30 defendant, and that he was ready and willing to provide for her support and maintenance at the place chosen by him for their home in the city of New York.

And this defendant denies that his seat in the New York stock exchange is worth the sum of thirty thousand dollars, or any sum in excess of fifteen thousand dollars, or that he is doing a large business as a stock broker or otherwise, or that he has accumulated large means.

And this defendant further answering admits the filing of his answer thereto, all as alleged in said complaint.

And this defendant denies each and every of the allegations contained in the sixth paragraph of said complaint.

And this defendant further answering admits each and every allegation contained in the seventh and eighth paragraphs of said complaint, and he admits the filing in the court of chancery of New Jersey of the supplemental bill alleged in the ninth paragraph thereof, and that said plaintiff was at liberty at any time to file a supplemental bill in said suit as alleged in said ninth paragraph. But this defendant says that he has been advised, and therefore alleges that said supplemental bill was not part of the original suit, but that under the laws and practice of the State of New Jersey, a writ of subpœna is required to be issued against a defendant named in such supplemental bill, and to be served on him before he can be required to answer thereto, and before the court can obtain any jurisdiction of the person of the defendant, concerning the matters and things alleged in said supplemental bill. He admits the making of the order of May 2, 1887, and the service thereof, and of said supplemental bill upon this defendant, but he alleges that said service was made in the State of New York and not in the State of New Jersey,
31 and that by such service the court of chancery of New Jersey obtained no jurisdiction of this defendant to make any personal judgment or decree against him in said supplemental bill. He admits that he did not appear or answer to said supplemental bill, and that a decree *pro confesso* was taken against him thereunder, and an order of reference made thereon; that the special master named in said order took proof of the facts alleged in said

supplemental bill, and at the time mentioned in the complaint filed his report in said suit, and that at the time mentioned in said complaint a final decree was duly made and entered in said suit by the court of chancery of New Jersey. But this defendant alleges that no proofs were taken or offered in said court of chancery of New Jersey of any of the acts of adultery charged against this defendant in said original bill of complaint, but that through inadvertence and the fraud of said plaintiff or her solicitor, in said New Jersey suit, and without the knowledge of this defendant, said master was induced to find and report, and said court was induced to adjudge and decree that all the facts charged in said original bill, as well as in said supplemental bill, were true, although no proof of any kind had at any time been made of any of the acts of adultery charged against defendant in said original bill, and such acts were expressly denied by defendant's answer thereto. But this defendant denies that said court of chancery of New Jersey ever obtained jurisdiction of the person of this defendant under said supplemental bill, or had any power to enter a personal decree against him, and he denies that such decree, so far as it is a personal decree against this defendant, is of any validity or effect, but he admits that said decree was effectual to dissolve the marriage status existing between him and the plaintiff.

32 This defendant further answering admits the allegations contained in the eleventh paragraph of said complaint, and he admits that he has not paid any of the costs, counsel fees or alimony which were in form adjudged against him by said decree of the court of chancery of New Jersey, and he alleges that he is not liable to pay the same; but he denies that he has not complied with the terms of said decree, so far as the same was binding upon this defendant.

And this defendant further answering denies each and every allegation in said complaint contained not herein and hereby specifically admitted.

Wherefore defendant demands judgment against said plaintiff, that the complaint herein be dismissed and for his costs and disbursements in this action.

MARSH, WILSON & WALLIS,
Defendant's Attorney-.

Office and P. O. address, 48 Wall street, New York city.

CITY AND COUNTY OF NEW YORK, *ss:*

Thomas G. Rigney, being duly sworn, says that he is the defendant above named; that the foregoing answer is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

THOS. G. RIGNEY.

Sworn to before me this 6th day of January, 1888.

WM. E. ZABRISKIE,
Notary Public (1), *N. Y. Co.*

33 Supreme Court.

ELLA L. RIGNEY, Plaintiff,
vs.
THOMAS G. RIGNEY, Defendant. } Case and Exceptions.

This case came on to be tried before the Honorable George L. Ingraham, justice, at a special term of this court, held in the city of New York, on the 11th day of April, 1888.

The pleadings as contained in the judgment-roll are to be deemed a part of this case.

The plaintiff's counsel called as a witness ELLA L. RIGNEY, the plaintiff, who being duly sworn, testified that she was married to the defendant on the 12th of February, 1873, at Grace church, in the city of Poughkeepsie; that there were two children by that marriage, namely: Chloise, aged fourteen years, and Thomas Dwight, aged eleven years; that both children were in court.

That the defendant ceased to support the plaintiff about the first of January, 1883, and never contributed to the support of the plaintiff or either of her children, from that time, except during the few months that he had stolen the boy and while he kept him away, but in no other way had he contributed to the support of the plaintiff or her said children since the 1st of January, 1883. During the time he had the boy he supported the boy.

34 The plaintiff's counsel here offered in evidence an exemplified copy of a decree of the court of chancery of the State of New Jersey in the case of Ella L. Rigney against Thomas G. Rigney. The same was received in evidence, marked Exhibit A, and consists of the papers, copies of which are annexed to the amended complaint in this cause and marked Exhibits "A," "B," "C," "D," "E," "F," and "G," which see.

The plaintiff's counsel also offered in evidence an exemplified copy of the order for publication of the subpœna to answer the supplemental bill and affidavit of the service thereof, which are as follows:

The order for publication is the same as that marked Exhibit "D," and annexed to the amended complaint herein, which see at page 22. By consent the same is not reprinted here and the exemplification is also omitted.

In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def't. } On Bill, etc. Proof of Service.

STATE OF NEW JERSEY, *Hudson County,* } *ss:*

Rynier J. Wortendyke, being duly sworn, on his oath saith that on the 4th day of May, 1887, he served on Thomas G. Rigney, the

defendant, in the above suit, a certified copy of the supple-
35 mental bill in the above cause filed May 18, 1886, and a certified copy of the order for publication in the above cause filed May 2nd, 1887, by delivering the said copies to him personally at the city of New York in the State of New York.

RYNIER J. WORTENDYKE.

Sworn and subscribed at Jersey City, this 4th day of May, 1887, before me.

JAS. P. NORTHRUP,
Master in Chancery of N. J.

Endorsed: In chancery of N. J. Ella L. Rigney, complainant, and Thomas G. Rigney, defendant. On bills, etc. Proofs of service. J. Augustus Fay, Jr., sol'r. Filed May 16, 1887.

It was thereupon admitted by the counsel for the respective parties, that no costs, counsel fees, or alimony had been paid by the defendant under or in pursuance of the decree.

The plaintiff here rested her case.

The defendant's counsel offered in evidence an exemplified copy of the new enrolment of the decree of the court of chancery of New Jersey in the suit of Rigney against Rigney.

36 To which the plaintiff's counsel duly objected on the ground that it was a matter that occurred subsequent to the commencement of the action and not within the issue, and should have been set up by supplementary answer.

But the court overruled the objection and received the amended decree in evidence, and plaintiff's counsel duly excepted. The same was as follows:

Said "amended decree" is in part the same as Exhibits "A," "B," "C," "D," "E," "F," and "G," annexed to the amended complaint herein, which see at pages 12–28, and said part, together with the exemplification, is by consent not reprinted here. The amended final decree was as follows:

In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Complainant,
and
THOMAS G. RIGNEY, Defendant.

On Supplemental Bill. Amended Final Decree. Filed January 31, 1888.

It appearing to the chancellor that by inadvertence and mistake the final decree made in this cause by the chancellor on the eleventh day of June, eighteen hundred and eighty-seven, contained a recital that the defendant had been guilty of the crime of adultery charged against him in the original bill of complaint, although it appears by the proofs submitted to the chancellor that the complainant did not attempt to substantiate the charge of adultery alleged in said original bill;

37 And it further appearing that due notice of this motion has been given to the solicitor of the complainant by Wallis & Edwards, who appear as the solicitors of the defendant for the purpose of this motion only:

It is on this twenty-fourth day of September, eighteen hundred and eighty-seven, ordered that the enrolment of said final decree heretofore entered in this cause on the eleventh day of June, eighteen hundred and eighty-seven, be, and the same is hereby, vacated; and that said final decree be, and the same hereby is, amended so as to read as follows:

This cause coming on to be heard before the court of chancery of the State of New Jersey in the presence of J. Augustus Fay, Junior, of counsel with the complainant, no one appearing for the defendant, and it appearing to the court that the complainant on the twenty-third day of April, A. D. eighteen hundred and eighty-three, exhibited her bill of complaint in this cause to obtain a divorce from the bond of matrimony for the cause therein set forth; and did likewise on the eighteenth day of May, in the year eighteen hundred and eighty-six, file her supplemental bill in the same cause, setting forth additional grounds and allegations of the same nature, and did swear that the said complaint was not made by any collusion between her and the said defendant for the purpose of dissolving the marriage between them, but in truth and good faith for the cause set forth in said bill and the supplemental bill; and it further appearing to the court that the defendant appeared and answered the original bill and admitted the truth of the bill in all its allegations except as to the charge of adultery; and it further appearing that upon the filing of the supplemental bill the said defendant has not ap-

38 peared, demurred, pleaded or answered to the same within the time limited by law, and the order of this court made on the twenty-ninth day of April, A. D. eighteen hundred and eighty-seven, together with a certified copy of the supplemental bill, was personally served upon the said defendant as by said order directed; and it further appearing that by the order of this court made on the nineteenth day of May, A. D. eighteen hundred and eighty-seven, it was referred to Patrick H. Gilhooly, Esq., one of the special masters of this court, to take the proofs and depositions offered by the said complainant in support of the allegations of the bill of complaint, and to report the same to this court together with his opinion therefrom:

Whereupon and upon reading the pleadings and proofs in the cause and the report of the said special master, dated June tenth, A. D. eighteen hundred and eighty-seven, from all of which it appears satisfactorily to the court that the marriage between the said complainant, Ella L. Rigney, and the said defendant, Thomas G. Rigney, was solemnized and took place in the State of New York as alleged in the bill, and that the complainant was an actual resident of the State of New Jersey at the time of filing her bill of complaint and at the time of the injuries complained of, and is still, and has been since January, in the year eighteen hundred and seventy-seven, a resident of the State of New Jersey, and that the said defendant

has been guilty of the crime of adultery charged against him in the said supplemental bill,

It is thereupon, on this eleventh day of June, in the year eighteen hundred and eighty-seven, by his honor, Alexander T. McGill, Junior, chancellor of the State of New Jersey, by virtue of the power and authority of this court and of the acts of the legis-
30 lature in such case made and provided, ordered, adjudged and decreed that the said complainant, Ella L. Rigney, and the said defendant, Thomas G. Rigney, be divorced from the bond of matrimony for the cause aforesaid, and the marriage between them is hereby dissolved accordingly, and the said parties, and each of them are and is hereby freed and discharged from the obligations thereof. And it is further ordered, adjudged and decreed that the custody of Ella Chloise Rigney and Thomas Dwight Rigney, the two children, issue of the said marriage, be and the same is hereby awarded to the complainant, Ella L. Rigney, their mother, absolutely.

And it is further ordered that alimony *pendente lite* be allowed at the rate of one hundred dollars per month from the filing of the bill up to the date of this order, and that from henceforth the said Thomas G. Rigney pay to the said Ella L. Rigney the sum of forty-five dollars per week at the termination of each and every week from the date of this order for her maintenance and education of her said children, Ella Chloise Rigney and Thomas Dwight Rigney; and that the defendant pay to the complainant her costs of this suit, to be taxed, and the sum of one hundred and fifty dollars for counsel fees, and that the complainant have execution therefor, according to the practice of this court.

And it is further ordered that said final decree, as amended, with the other proceedings in the cause, be re-enrolled at the cost of defendant.

ALEX. T. McGILL, JR., *C.*

I, Allan McDermott, clerk of the court of chancery of the State of New Jersey, the same being a court of record, do hereby cer-
40 tify that the foregoing is a true copy of the amended final decree on supplemental bill in the cause wherein Ella L. Rigney is complainant, and Thomas G. Rigney is defendant, now on the files of my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court at Trenton, this sixteenth day of March,
[L. S.] A. D. eighteen hundred and eighty-eight.

ALLAN McDERMOTT, *Clk.*

Plaintiff's counsel here called as a witness, DANIEL M. DICKENSON, who, being duly sworn, testified:

That he resided in Trenton, New Jersey, and was an attorney and counsellor at law of the supreme court of the State of New Jersey; that his business was that of practising law; and also that he was employed in the chancellor's office of New Jersey, and had been for the last sixteen years; that his employment there was that of chief

clerk and manager of the office; that he was the author of a work on chancery practice in New Jersey, and that it was a part of his business to make himself familiar with the practice of that court.

The defendant's counsel here asked the witness the following question:

Q. Will you state whether in the law and practice of New Jersey a supplemental bill as to matter not alleged in the original bill is or is not an independent proceeding?

The plaintiff's counsel duly objected to this question on the ground that it was incompetent. But the court overruled
41 the objection and allowed the question to be answered, and plaintiff's counsel duly excepted.

The witness thereupon answered: "It is an independent proceeding so far as the supplementary matter is concerned."

The defendant's counsel also asked the witness the following question:

Q. Under the law and practice of New Jersey, does an appearance to the original bill operate as an appearance to the new matter in the supplemental bill?

To which question the plaintiff's counsel duly objected upon the ground that the same was incompetent. But the court overruled the objection, and the plaintiff's counsel duly excepted and the witness thereupon answered.

A. No, sir. You are not speaking now particularly in regards to divorce cases?

Q. No—generally.

A. Generally.

The defendant's counsel thereupon asked the witness the following question:

Q. As to new matter set up in the supplemental bill in New Jersey, what is it necessary to do to give the court of chancery jurisdiction over the defendant?

This question was duly objected to by the counsel for the plaintiff, on the ground that witness was not competent to testify and that the subject was incompetent, the jurisdiction being determined by statute.

42 But the court overruled the objection and allowed the question to be answered, and the plaintiff's counsel duly excepted. The witness thereupon answered: "Under the supplementary bill as also with regard to an original bill, both must pray for the subpœna and a subpœna must be issued under a supplemental bill as under an original bill. So far as the supplementary matter is concerned, it is an original bill, a new bill."

The defendant's counsel asked the witness the following question:

Q. And as to that, is the defendant in court without service of the subpœna or his appearance to the supplementary bill?

To which the witness answered: "He is in court by the service of the subpœna, or upon an appearance to the supplementary bill. Those are necessary under the supplementary bill to bring him into court as to that new matter."

The defendant's counsel asked the witness the following question:

Q. And if there is no service of the subpœna issued under the supplementary bill and no appearance, state whether or not the defendant as to new matter contained in the supplementary bill is in court.

To which question the plaintiff's counsel duly objected upon the ground that the question was incompetent and that the jurisdiction of the court was regulated by statute, and the witness was incompetent to testify to the matter called for.

But the court overruled the objection and allowed the question to be answered, and the plaintiff's counsel duly excepted. The witness thereupon answered: "He is not in court."

43 The defendant's counsel asked the witness the following question:

Q. So that in a case of this kind, where an orginal bill has been filed, to which the defendant has answered, and a supplementary bill is filed setting up and alleging new facts to which the defendant has neither appeared not answered, and the subpœna under the supplementary bill has never been served upon him in the State of New Jersey, is under the law and practice of New Jersey a decree founded upon such supplementary matter binding personally upon the defendant?

To which question the plaintiff 's counsel duly objected upon the same ground as the last preceding question.

But the court overruled the objections and allowed the question to be answered, and the plaintiff's counsel duly excepted. The witness thereupon duly answered: "The practice in New Jersey, perhaps, is a little peculiar in that respect. If the decree contains the fact that he was served, *prima ficie*, he was; if it does not, why then there is no decree against him binding him personally, but so long as the decree stands against him in our State, why, of course, it is a good decree."

And being cross-examined, the witness further testified:

Q. So long as it remains in form against him it is a valid decree?

A. Good in our State.

Q. You don't mean to say that if a supplemental bill is issued in a suit that that does away with the original bill?

A. No, sir; it does not do away with the original bill.

44 Q. It does not get the defendant out of court?

A. No, sir; he still remains in court on the original bill and on his original appearance.

Q. You recognize in the State of New Jersey, the decisions of the late court of chancery of New York, as valid, do you not?

A. We do recognize them where a statute of our State does not conflict with them, or where the rules of the court as they are now constituted, do not conflict with it. We think very highly of them.

Q. Paige's reports particularly?

A. Yes, sir.

Q. You do not mean to be understood as saying that the supplementary bill is a new suit?

A. I do practically. A new suit so far as the supplementary matter is concerned.

Q. But it is nevertheless a part and parcel of the original suit, is it not?

A. It is when the chancellor has given leave to file it.

Q. Or if he recognizes it as having been filed with leave?

A. I presume that would be so, although I could not say.

Q. If he makes a decree upon the original and supplemental bill together reciting them, that is a recognition, is it not, of the supplemental bill?

A. Well it shows upon the face of it that it has been recognized. So far as that decree I suppose in New Jersey, it will be a recognition.

Q. You do not mean to enunciate any such doctrine here, as that a decree of the court of chancery may be good in part and invalid as to the rest of it?

A. Well a decree of the court of chancery when it is pronounced, is the law of the State recognized in all its parts.

Q. And especially so if a party had acted upon it, would it not?

45 A. I presume so. If they recognized the decree I do not know under what circumstances; perhaps that might arise.

Q. Suppose that prior to that decree the party would have been prohibited from marrying again, and after that decree he married upon the strength of it, that would be a recognition of the decree in your judgment, would it not?

A. Well, I don't know about that, he might—if he married in New Jersey, I suppose he would be amenable to the law under which that decree was made, but not in the court of chancery.

Q. I do not think you get my meaning. Would that not be a recognition of the decree?

A. He might marry in spite of the decree.

Q. He would be guilty of bigamy then, would he not?

A. Yes, sir; I think so.

Q. But marrying after a decree had been obtained against him, that would be a recognition by him of it, would it not?

A. Well, he takes the risk, of course, where he marries again where there is any decree prohibiting it.

Q. Cannot you answer that question?

A. Well, I do not know how far the courts would hold that he had recognized a decree by marrying again.

Q. I am putting you in the place of the court for the time being. Would not you regard that as a recognition of the decree?

A. Well, I might, and might not, I cannot say.

Q. What authority have you for saying that a subpœna must be issued upon a supplemental bill?

A. All the forms of bills, supplemental bills that I have ever seen from England and America have contained a prayer for a subpœna.

Q. There is no statute that you are aware of requiring it?

46 A. The form of the bill is regularly settled.

Q. I ask you whether there is any statute that you — aware of requiring it?

A. There is a statute of our State requiring a subpœna to be issued upon every bill.

Q. Is there a statute requiring a subpœna to be issued upon a supplemental bill?

A. Not in terms.

Q. Is there a statute requiring the defendant after he has been got into court once to be got in again in the same suit?

A. Where he is got in by the supplemental bill?

Q. Is there any such statute as that?

A. Oh! statute. I beg your pardon—no, sir. That is under the settled practice of the court.

Q. Well, can you refer to either statute or decision as authority for such a statement?

A. Well, I cannot just now. I have attended here for the purpose of testifying several times, and my attention has been called to this matter.

Q. Now, do you know of any decision of your State, or of the State of New York requiring a subpœna to be issued on a supplemental bill?

A. Well, I cannot recall the name of the case.

Q. Can you recall any decision?

A. It has always been so.

Q. No; you understand my question? I asked you for a reported case.

A. I do not think I can recall any special case—not now, I have not any in mind—I know there must be some.

Q. You think there must be?

A. I am certain of it. I will find them and send them to you. There is no statute, certainly, upon the subject.

The statute conferring jurisdiction upon the court of chancery, is in the revision of New Jersey, under the head of "chancery

47 acts" "respecting the court of chancery," I think is the title.

Plaintiff's counsel offered in evidence so much of the revision of New Jersey, published in 1877, as related to the court of chancery. Same was so received and may be referred to as a part of this case.

Corbins New Jersey court rules contains the rules of the court of

New Jersey as well as of the United States court in New Jersey. Rule 216 was promulgated in 1883.

The same was here offered and was received in evidence.

Rule 216—*Revivor of Suit.*

Promulgated Nov. 7, 1883.

"Hereafter, upon any suit in the court of chancery becoming abated by death, marriage or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit a bill of revivor or supplemental bill to obtain the usual order to revive, or the usual or necessary decree or order to carry on such proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained, as of course, upon an allegation supported by affidavit, or petition duly certified, of the abatement of such suit or of the same having become defective, or of the change or transmission of interest or liability; which affidavit or petition shall also state the grounds upon which the right to revive is claimed. An order so obtained, when served upon the party or parties who, according to the existing practice, would be defendant or defendants to the bill of
48 revivor, or supplemental bill, shall from the time of such service, be binding on such party or parties in the same manner, in every respect as if such order had been regularly obtained according to the existing practice. And such party or parties will thenceforth become a party or parties to the suit in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill; provided, however, that he or they may within fifteen days after such service, apply to the chancellor to discharge such order; provided, also, that if any party so served is under any disability other than converture such order is to be of no force or effect *or* against such party until four days shall have elapsed after a guardian *ad litem* shall have been duly appointed for such party."

And being further examined on the redirect, witness further testified:

By defendant's counsel:

Q. Where a plaintiff in a suit for divorce is a resident of New Jersey and the defendant is brought into court by the substituted and not by personal service under the laws of New Jersey, is such decree effectual to dissolve the marriage relation?

A. Where the defendant is brought into court by publication?

Q. Yes.

A. According to the laws of our State, it is effectual as a decree *a vinculo.*

Q. Is it an effectual decree in New Jersey to bind the defendant personally?

A. I have never known any case decided in New Jersey upon that point.

The defendant here rested his case.

49 The plaintiff's counsel thereupon called as a witness J. AUGUSTUS FAY, who being duly sworn, testified:

That he was a counsellor-at-law and solicitor in chancery, residing in Elizabeth, New Jersey, and the solicitor for the plaintiff in the suit in the court of chancery referred to in the decree in evidence and obtained the order to appear and answer the supplemental bill.

The subpœna was issued, although there was a question as to the actual necessity at the time.

That on the 29th of April, 1887, witness obtained from the chancellor of New Jersey an order to be served either personally upon the defendant to answer the new matters alleged in the supplementary bill, or in default of the personal service to have the same published.

The witness produced a paper which he testified was an exemplified copy of the order and proof of service. The same is already in evidence. See page 34.

Question by plaintiff's counsel:

Q. Now when you obtained that order, what direction or decision did the chancellor make in regard to the time of service?

A. It appears in the order—it is as he signed it, filling in the time himself, in the original.

Q. Did the chancellor make any reference to any order of the court in doing so?

This question was objected to by counsel for the defendant as incompetent, and the court sustaine dthe objection and the plaintiff's counsel duly excepted.

The witness further testified:

50 As a matter of fact the order modifying the judgment was signed in some way during the month of February last. I had notice of the motion to modify in September last, but I was busy at the time and gave it no attention.

I have not acted as solicitor for the plaintiff since the time that the original decree was obtained. My relations, as far as my professional relations were concerned, terminated some time ago, and before, in fact, the decree was amended in any way—I think they were terminated prior to August, 1886—I think it was in July of that year.

By the COURT:

Q. You had no authority from the plaintiff to appear for her upon the modification of this decree?

A. No, sir; I had not; in fact, I did not think there were such relations existing between us as authorized me. I did in September assume authority to go before the chancellor on the 28th. It was

adjourned to the 28th, but at that time no decree had been prepared or amendment. They wanted one or two words changed as a matter of sentiment, and I insisted that if they had a right to change it, they should comply with the decree by paying alimony and counsel fee, and the chancellor left it in that way; finally a letter was written to me by one of the solicitors, containing a statement that they proposed to submit certain amendments to the chancellor and I was engaged in court at the time and did not attend. It was long after, according to the rules of the court of chancery, that any amended decree could be had. I will show you the rule that any amendment must be made ten days after the decree has been served upon the other side; it is rule 220.

The rule was offered and received in evidence, and is as follows:

51 "220. Every party who may be affected by any order or decree, shall be held to have waived all objection to the form thereof, unless he shall file his objection thereto in ten days from the time of filing such order or decree. The objection shall specify the part or parts of the order or decree to which he objects, and state what the form ought to be. Provided that nothing herein contained shall be held to prevent or preclude an application to the chancellor to settle the form of the order or decree at any time."

Q. Did you ever notify the plaintiff that an application had been made to amend the decree?

A. I saw the plaintiff in the month of October last, I think, and informed her that there had been an attempt to amend it in some particulars and that the chancellor had not granted the amendment except subject to the fact that the balance of the decree should be complied with. I have not seen the plaintiff, I think, since then until after I was subpœnaed as a witness on one occasion. The plaintiff's legal residence is the city of Elizabeth. She has been away sending her children to school and visiting her friends in Canada. Her residence during the winter has been in Canada.

By the COURT:

Q. Was she last summer and last fall in the State of New Jersey?

A. She was in New Jersey until some time last summer, when she went, as I understood, to visit some friends in Canada, and she returned in the fall, and this winter she has been away.

Q. You were paid off in the month of July?

A. Well, it was before any application for an amendment was made.

52 Q. When you applied for the order of publication in regard to the supplementary bill, what, if anything, did the chancellor say in regard to the time which he would allow?

This question was objected to by the defendant's counsel, and the objection was sustained by the court, and the plaintiff's counsel duly excepted.

By the COURT:

Q. The chancellor made an order afterwards?

A. He made it at that time.

Q. Did the chancellor then, in substance, say that he would allow the same time that he would on an application for the revival under rule 216?

To which defendant's counsel objected, but not upon the ground that the question was leading, and the court sustained the objection, and plaintiff's counsel duly excepted.

The plaintiff's counsel here recalled ELLA L. RIGNEY, who being further examined testified: That she had never changed her residence from the State of New Jersey, and had still a furnished house there, which is her home; that she had been absent to educate her children in Canada; that she had been back and forth and the longest period of her absence was six or eight months, something like that; that she never had any notice of an application to amend the decree, and knew nothing about it; that she first heard that an application had been made when attending the trial of this cause in March last.

53 It was admitted that this action was commenced on the 4th of August, 1887.

The plaintiff here rested her case, and the defendant called as a witness HAMILTON WALLIS, who, being duly sworn, said that he was a resident of East Orange, New Jersey; that he was an attorney and counsellor at law and solicitor in the State of New Jersey. In September last he prepared a notice of an application to the court of chancery in the suit of Ella L. Rigney *vs.* Thomas G. Rigney, for a modification of the decree in that suit, to make it conform to the proof. That notice was served by him upon J. Augustus Fay, and he admitted service in his own handwriting, with which writing I was familiar. I have frequently seen him write. Upon Fay's application the motion was adjourned. The adjournment was entered upon the back of the notice in Fay's own handwriting and signed by Fay. An exemplified copy of that notice I now offer in evidence.

In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def't. } On Bill, &c. Notice.

To J. Augustus Fay, Jr., sol'r of compl't.

SIR: Take notice that on Saturday, the seventeenth day of September instant, at ten o'clock in the forenoon, we shall apply
54 to the chancellor of this State at his chambers, No. 1 Exchange place, Jersey City, for an order modifying the final decree made in the above cause on the eleventh day of June, A. D. 1887, in the following particular: by striking out of the part thereof which now reads: "The said defendant has been guilty of the crime

of adultery charged against him in the said bill of complaint and the supplemental bill thereto," the words "bill of complaint and the," so that said part of said decree will read as follows: "The said defendant has been guilty of the crime of adultery charged against him in the said supplemental bill thereto."

And for such further modification as to the chancellor shall seem best, the premises considered.

Dated Sept. 9, 1887.

Yours respectfully,

WALLIS & EDWARDS,
Solicitors of said Defendant for the Purposes of this Motion only.

In chancery of New Jersey. Between Ella L. Rigney, complainant, and Thomas G. Rigney, defendant. On bill, &c. Notice of motion. Wallis & Edwards, solicitors for this motion.

Service hereof acknowledged this September 9, 1887.

J. AUG. FAY, JR.,
Sol'r of Compl't.

Filed March 30, 1888.

55 Hearing hereon stands over until September 24th, 1887, at my request.

J. AUG. FAY, JR.,
Sol'r of Compl't.

The original is on file in the court of chancery. Within the last two weeks an application was made to the court of chancery of New Jersey or the chancellor of New Jersey, by Mrs. Rigney, to have this amendment of the decree struck out and the decree restored to its original form. I attended before the chancellor on that motion. I offer in evidence an exemplified copy of the petition and the order of the court thereon.

In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def't. } On Bill and Supplemental Bill. Notice.

To Messrs. Wallis & Edwards, solicitors of the defendant:

Please take notice that we shall apply to the chancellor at the chancery chambers at Newark, on Monday, the second day of April next, upon the petition, a copy of which is hereto annexed, for the relief therein asked, and upon such motion we will use and read the decree and amended decree in the said cause and the said petition, and the affidavits and other papers thereto annexed, and copies of which are also herewith served.

Dated March 28th, 1888.

TAYLOR & McGILL,
Sol'rs of the Petitioner.

56 NEW JERSEY, } ss:
Hudson County, }

William B. Dumont, being duly sworn according to law, on his oath saith that he is a clerk in the office of Taylor & McGill, counsellors-at-law, and that on the 28th day of March last he served a copy of the foregoing notice and of the petition, affidavits and other papers thereto annexed, upon William D. Edwards, Esq., one of the firm of Wallis & Edwards, counsellors-at-law, and attorneys and solicitors of the defendant, Thomas G. Rigney, by leaving the same at the residence of the said William D. Edwards in Jersey City, deponent first having gone to the office of said Wallis & Edwards for the purpose of making such service, and found said office closed.

WILLIAM B. DUMONT.

Sworn and subscribed before me at Jersey City this 2d day of April, A. D. 1888.

M. W. BRETT,
Notary Public, State of New Jersey.

In Chancery of New Jersey.

Between—

ELLA J. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def't. } On Bill and Supplemental Bill.

To the Honorable Alexander T. McGill, Jr., chancellor of the State of New Jersey:

Your petitioner, Ella L. Rigney, the complainant in the above cause, respectfully shows:

57 That a decree of divorce therein was made by this honorable court in her favor and against the defendant, Thomas G. Rigney, above named, on the eleventh day of June, A. D. 1887, in and by which decree it was provided and ordered, adjudged and decreed, among other things, that alimony *pendente lite* be allowed at the rate of one hundred dollars per month from the filing of the bill up to the date of that order, and that from thenceforth the said Thomas G. Rigney pay to your petitioner the sum of forty-five dollars per week at the termination of each and every week from the date of that order, for her maintenance and support, and the support, maintenance and education of her children, Ella Chloise Rigney and Thomas Dwight Rigney, and that the defendant pay to your petitioner her costs of the suit to be taxed and the sum of one hundred and fifty dollars for counsel fee.

Your petitioner further shows that the said defendant at the date of said decree was and still is a non-resident of the State of New Jersey, resident in the city, county and State of New York, and that on or about the eighteenth day of September in the same year the said defendant, relying upon the efficacy and full force and effect of the said decree, and availing himself thereof, was in the said city of New York, married to one Abbie Ahern.

Your petitioner further shows that the said defendant has never complied with the directions of the said decree in regard to the payment of alimony, costs or counsel fees, and that no part of the said alimony, costs or counsel fees has been paid by him to or for your petitioner, although he is, as your petitioner is informed and believes, abundantly able to pay the same and to continue his payment of said alimony from month to month, in accordance with the said decree.

58 And your petitioner has been obliged to commence an action against him in the said city of New York, for the enforcement there of said decree, and collection of the amount already due to her as aforesaid.

That her said action in the said city of New York was commenced in the supreme court of the State of New York, on or about the fourth day of August, A. D. 1887.

That her said suit has been from that time and is still pending, and is being contested by said defendant.

That after the rendering of the said decree, and after the institution of your petitioner's said suit in the said city of New York, based upon the said decree as aforesaid, and on or about the thirty-first day of January, A. D. 1888, the said defendant caused an application to be made to your honor for the making of an amended decree in said cause, which said amended decree was made as of the twenty-fourth day of September, A. D. 1887, but was not in fact made until the said thirty-first day of January, A. D. 1888, and was then made without notice of the motion therefor to your petitioner, or any one representing her, although it is recited in the said amended decree that due notice of such motion had been given to "the solicitor of the complainant," —

The fact, however, being that she had no solicitor in this cause in this State after the termination of her said suit in this court by the said original decree of June eleventh, A. D. 1887, upon which termination of suit the solicitor who had conducted the same for her was discharged by her from further service in her behalf, and on the fifteenth of October, A. D. 1887, he was paid on her behalf all his costs and fees therein.

59 That she never had any knowledge or intimation from any source that the said original decree in this cause had been amended, or that any application had been made for any amendment thereof, until the fourteenth day of March instant, when the fact of such amendment came to her knowledge through her New York counsel.

That she is informed and is advised that the said amended decree declares the enrolment of the original decree to be thereby vacated, and then decrees the divorce upon the ground of the defendant's adultery, as charged against him in the supplemental bill in the said cause, whereas the original decree decreed the divorce as based upon the charges contained in the original bill in said cause, but in all other respects the said amended decree made order as in said first decree.

Your petitioner further shows that the fact that said amended

decree vacates the enrolment of the original decree and amends the same as aforesaid, is now used or sought to be used as a defence to her said action in New York, the said defendant asserting there that this court had no jurisdiction of him under the supplemental bill, and therefore and thereby seeking to evade the effect of said decree so far as alimony, costs and counsel fees is concerned, but at the same time sheltering himself (as to the validity of his second marriage) under the original decree, the amendment of which is not claimed or stated, or does not appear to have been made, until six days after his said second marriage, and this by the decree made as aforesaid January 31st, A. D. 1888.

Your petitioner, in view of the above-stated facts, and especially in view of the fact that the defendant availed himself of the
60 provisions of the original decree so far as the divorce is concerned, by remarrying before the amendment of the decree, and of the further fact that the said defendant has not complied and does not comply with the decree of this court, as to the payments aforesaid, and is therefore in contempt of this court, hereby respectfully asks that the said amended decree and the enrolment thereof may be set aside and vacated, and said original decree be restored to its original force and effect, as of its date, and be re-enrolled as the final decree in said cause.

And that your petitioner may have such other and further relief in the premises as the circumstances of the case may require.

Dated March 28, 1888.

ELLA L. RIGNEY.

TAYLOR & McGILL,
Solicitors and of Counsel.

NEW JERSEY, *Hudson County,* } ss:

Ella L. Rigney, the petitioner in the foregoing petition named, being duly sworn upon her oath according to law, saith that the facts, matters and things in the said petition set forth are true according to the best of her knowledge, information and belief.

And deponent further saith that no part of the alimony, costs and counsel fee awarded to her in and by either the original or amended decree, referred to in the said petition, has been paid to her by the said defendant.

ELLA L. RIGNEY.

Sworn and subscribed before me at Jersey City this 28th day of March, A. D. 1888.

R. O. BABBITT,
M. C. C. of N. J.

61 In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def't.

STATE OF NEW JERSEY, *Hudson County,* } ss:

Joseph A. Shoudy, being duly sworn, says: I am an attorney and counsellor at law of the State of New York, having my office and place of business at No. 45 William street, in the city of New York. I am one of the attorneys and counsel for the above-named complainant, in an action brought by her as plaintiff against the above-named defendant in the supreme court of the State of New York.

Said action was commenced on or about the 4th day of August, 1887, and is still pending and undetermined. Said action was brought for the purpose of enforcing the decree of this court in the above-entitled cause. In the prosecution of said action as attorney for the plaintiff, I procured from the clerk in chancery an exemplified copy of said decree on or about the 7th of November last, for use upon the trial of said action, and I never knew or had any intimation from any source that the decree had been in any manner amended until the 14th instant, when I learned that some amendment had been in some manner obtained, and at once employed Messrs. Taylor & McGill to ascertain what had been done, and if possible to obtain a vacation of any order which had
62 been made without notice. The said cause in the supreme court is at issue, and is set down for trial on the first Monday of April next. A copy of the pleadings in that action is hereto annexed. In the answer to the complaint in that action, the defendant denies the jurisdiction of the court of chancery of New Jersey, so far as the decree relates to the subject of alimony, but admits that the decree is valid and effectual so far as to dissolve the marriage relation between the parties.

It is also admitted in said answer, that acting on the theory of the validity and binding force of said decree, the defendant married a woman named Abbie Ahern, with whom he is now living. The defendant has never in any manner complied with the terms of said decree, and has not paid either costs or alimony, or any part thereof, as is also admitted by said answer.

I am now informed and believe, that the order by which the decree in this cause was amended in terms vacates the original enrolment, and amends the decree in a very material part of it.

I verily believe that the plan of the defendant has been as follows: To first marry before making any application for an amendment, so that he might justify such marriage upon the decree as it stood on the 18th of September last, the time of his marriage, and then to apply for such an amendment as he has now obtained, the effect of which, his counsel claims, is to leave the decree ineffectual as a personal judgment against him upon the question of alimony,

and this is the position indicated by the answer in the action of the supreme court, as I understand it.

J. A. SHOUDY.

Sworn and subscribed before me, at Jersey City, this 28th day of March, A. D. 1888.

R. O. BABBITT,
M. C. C. of N. J.

63 (Here follow the amended complaint and amended answer in this action. By consent, the same are not here reprinted.)

In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def't.

NEW JERSEY, *Essex County*, } ss:

William D. Edwards, of full age, being duly sworn according to law, on his oath deposeth and saith: That he is a member of the firm of Wallis & Edwards, solicitors; that his said firm filed an answer on behalf of the defendant to the original bill of complaint filed in the above-stated cause; that no testimony was taken therein from the time of the filing of the bill in April, eighteen hundred and eighty-three, to May, eighteen hundred and eighty-six, except testimony on the petition filed in the case relative to the custody of the children *pendente lite;* that on the eighteenth day of May, eighteen hundred and eighty-six, or thereabouts, the complainant filed her supplemental bill in this case, whereupon deponent notified the defendant of that fact, and sent him a copy of the supplemental bill; that said defendant thereupon notified his solicitors in the original bill that he did not desire to file an answer to said supplemental bill, or that deponent's said firm should in anywise represent him relative to the same; that the solicitor of the
64 complainant, J. Augustus Fay, Jr., applied to deponent to acknowledge service of subpœna issued out of the court upon said supplemental bill; whereupon this deponent informed said Fay that his firm had been expressly forbidden so to do; that after the final decree had been entered in June, 1887, on the supplemental bill, and the same had been examined very critically, it was ascertained that the recitals therein were incorrect, in that said final decree recited that the defendant had been guilty of the crime charged against him in the original bill of complaint as well as that charged against him in the supplemental bill, although the fact was that no testimony had been offered before the master in support of any of the material allegations in the original bill, other than the fact of the marriage and the names of the children, and no testimony had been adduced of any of the offences charged

against him in the said original bill, but the same were originally wholly abandoned; that on the 9th day of September, 1887, deponent's firm having been engaged by said Rigney for the sole purpose of having said final decree corrected, so as to conform with the proofs and pleadings in the case, served a notice upon the complainant's solicitor, a copy whereof, with the several indorsements thereon, is hereunto annexed; that said notice was returnable before the chancellor at his chambers in Jersey City, on September 17th, at ten o'clock; that service of said notice was duly acknowledged by said Fay as solicitor for the complainant; that deponent has been informed, and believes, that said hearing was postponed from the 17th day of September to the 24th day of September at the request of said Fay as such solicitor; that on the 24th day of September, at the time and place mentioned in said notice, this deponent appeared before the chancellor, and after waiting until eleven o'clock for the appearance of said Fay, presented the facts in the
65 case to the chancellor, who directed this deponent to draft and submit to him for signing an amended final decree, correcting the errors in the original final decree; that deponent's office is in the same building with the chancery chambers in Jersey City, and while deponent was preparing said amended final decree he received a telegram from said Fay as follows:

ELIZABETH, N. J., *Sept.* 24, 1887.

Hon. W. D. Edwards, counsellor, E. Place:

Detained here till eleven o'clock. Will see you at noon.

J. AUGUSTUS FAY, JR.

That said Fay arrived in Jersey City shortly after 12 o'clock, and in company with this deponent appeared before the chancellor in opposition to the defendant's motion; the chancellor, after hearing the matter, said in substance that as there were manifest errors in the decree, the defendant should pay the cost of correcting the same, and directed deponent to draft an amended final decree and submit the same to said Fay; the chancellor further said that he would consider before signing the same, whether any other terms should be imposed upon the defendant; that deponent endeavored to persuade said Fay to remain in his office that evening until the amended decree should be drafted in proper form, but Fay pleaded other engagements and went away; that for some reason or other, the said final decree was not prepared by deponent until the early part of January, 1888, when this deponent prepared the amended final decree which was afterwards signed by the chancellor without change, and on January 25, 1888, deponent forwarded the same to Mr. Fay for inspection, with a letter whereof the following is a true copy:

66 In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Comp't,
and
THOMAS G. RIGNEY, Def't.

JANUARY 25, 1888.

DEAR SIR: I enclose copy of an amended final decree herein which I shall present to the chancellor for signature at the State house in Trenton, on Tuesday, January 31, 1888, at 10 a. m. Please inform me if you have any objection to its form.

Yours truly, WM. D. EDWARDS.

J. Augustus Fay, Esq., Elizabeth, N. J.

That on the morning of January 31 this deponent received from said Fay at Trenton a telegram whereof the following is a true copy:

ELIZABETH, N. J., *January* 31, 1888.

Hon. W. D. Edwards, Trenton:

Detained by business; will arrive at Trenton at two o'clock.

J. AUGUSTUS FAY, JR.

That deponent took said telegram, with the final decree as amended, to the chancellor at his chambers in the State house of the city of Trenton and requested the chancellor to remain in
67 Trenton until the time mentioned in the telegram, so that both parties might be heard; the chancellor thereupon said that he would hear the matter at that time, as he did not expect to stay in Trenton as late as two o'clock. After hearing, the chancellor signed said amended final decree and directed deponent to file the same with the clerk in chancery, saying that if Fay appeared before his departure he would send for deponent, who was at that time engaged on other matters in the State house. Latter in the same day, deponent received another telegram from said Fay, whereof the following is a true copy:

ELIZABETH, N. J., *January* 31, 1888.

Hon. Wm. D. Edwards:

Still detained by jury trial; will meet you Saturday at Jersey City in Rigney matter.

J. AUG. FAY.

That on February 3, deponent wrote to said Fay relative to this matter as follows:

Dictated.

JERSEY CITY, *Feb'y* 3, 1888.

J. Augustus Fay, Esq., Elizabeth, N. J.

DEAR SIR: On Tuesday morning I received your telegram about your inability to attend to Rigney *vs.* Rigney before the chancellor.

I went upstairs and saw him, stated that you would be unable to be there until two o'clock. Chancellor replied that he did not expect to remain that long and that he would examine the proposed amendments to the decree at that time. He did so and signed said decree saying that if you appeared before he left he would send downstairs for me.

Of course you did not come as you were detained by the case which you mentioned in your telegram.

68 The amended decree has been signed, but I suppose if there is anything wrong in the matter you can have it fixed by the chancellor.

Yours respectfully, WM. D. EDWARDS.

So far as deponent knows, Mr. Fay did not appear before the chancellor on Saturday, February 4, 1888; he failed to notify deponent's firm of such intention or fact; that the notice of this motion with accompanying papers was left at deponent's house in Jersey City, March 28, 1888; so far as deponent knows, they have never been served upon defendant and deponent has no authority to represent defendant in this cause further than he was employed to make the motion heretofore referred to for the correction of the final decree herein to enter the order upon such motion; nevertheless as the result of such motion is here and now attacked, deponent conceives it to be his duty to the court to present to it the facts upon which, and the circumstances under which said amended decree was made.

WM. D. EDWARDS.

Sworn to and subscribed at Newark this 2nd day of April, A. D. 1888, before me,

WM. B. GILLMORE,
Master in Chancery of New Jersey.

69 In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def'd't. } On Bill, &c. Notice.

To J. Augustus Fay, Jr., sol'r of compl't.

SIR: Take notice that on Saturday, the seventeenth day of September, instant, at ten o'clock in the afternoon, we shall apply to the chancellor of this State at his chambers, No. 1 Exchange place, Jersey City, for an order modifying the final decree made in the above cause on the eleventh day of June, A. D. 1887, in the following particular: by striking out of the part thereof which now reads, "The said defendant has been guilty of the crime of adultery charged against him in the said bill of complaint and the supplemental bill thereto," the words "bill of complaint and the," so that said part of said decree will read as follows: "The said defendant has been guilty of the

crime of adultery charged against him in " the said supplemental bill thereto.

And for such further modification as to the chancellor shall seem best, the premises considered.

Dated Sept. 9, 1887.

Yours respectfully,

WALLIS & EDWARDS,
Solicitors of said Defendant
for the Purposes of this Motion only.

70 Indorsed: In chancery of New Jersey. Between Ella L. Rigney, compl't, and Thomas G. Rigney, def'd't. On bill, &c. Notice of motion. Wallis & Edwards, sol'rs for this motion.

Service hereof acknowledged this Sept. 9th, 1887.

J. AUG. FAY, JR.,
Sol'r of Compl't.

Hearing hereon stands over until Sept. 24th, 1887, at my request.

J. AUG. FAY, JR.,
Sol'r of Compl't.

NEW JERSEY, *Essex County,* } ss:

James P. Northrop, of full age, being duly sworn according to law on his oath deposeth and saith that he is the managing clerk in the office of Wallis & Edwards, lawyers of Jersey City; that on or about the ninth day of September, 1887, he prepared at the request of Mr. Hamilton Wallis, a notice, of which a copy is annexed to this affidavit and marked Schedule "A;" that he caused a copy of said notice to be served upon J. A. Fay, Jr., the solicitor of the complainant in said suit, and said notice was brought back to the deponent indorsed with service acknowledged, as deponent believes,
71 by said Fay; that subsequent to the ninth day of September, and before the seventeenth day of September, Mr. Fay came to the office of Wallis & Edwards and talked with deponent about the time fixed for the hearing of said motion and stated that it would *would* be extremely inconvenient for him to be present at that time, giving as a reason his desire to attend a celebration about to be held in Philadelphia, as deponent now recollects said conversation, for postponing the motion; that deponent consented that the same should be adjourned until the twenty-fourth of September, and wrote upon the back of the notice of motion the following: " Hearing hereon stands over until Sept. 24th, 1887, at my request," and presented the same to said Fay for signature, who signed the same in the presence of deponent; that said Fay made no protest that he was not at that time the solicitor of the complainant; that he inquired of deponent the reasons for obtaining a modification of that decree, and also made some observations upon the fact of the notice being signed as solicitors for the purpose of this motion only.

JAS. P. NORTHROP.

Sworn and subscribed at Newark this 2nd day of April, A. D. 1888, before me,

WM. B. GILLMORE,
M. C. C. of New Jersey.

72 In Chancery of New Jersey.

Between—

ELLA L. RIGNEY, Compl't,
and
THOMAS G. RIGNEY, Def'd't.

Upon reading and filing the petition and affidavits on the part of the complainant, dated March 28th, 1888, asking that the amended decree filed in this cause and the enrolment thereof be set aside and vacated and for further relief:

It is on this second day of April, A. D. 1888, ordered that the said petition be and the same is hereby dismissed without costs.

ALEX. T. McGILL, JR., *C.*

The exemplification of the foregoing papers is by consent not printed.

Being cross-examined, witness further stated:

That as a matter of fact, the order amending the decree was signed in January.

The plaintiff's counsel here offered in evidence a certificate as proof that the seat in the New York stock exchange held by defendant was worth $18,000, which was so received.

The testimony here closed and the case was submitted to the court upon briefs.

73 The court afterwards rendered its decision contained in the judgment-roll. The plaintiff's counsel duly excepted to the findings of fact and conclusions of law as contained in said decision; also to the rulings of the court upon the findings of fact and conclusions of law proposed by the plaintiff; such exceptions duly filed before judgment was entered herein, and are deemed a part of this case.

Judgment was entered in accordance with the decision and the plaintiff in due time duly appealed therefrom.

Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff,
vs.
THOMAS G. RIGNEY, Defendant.
} Plaintiff's Requests.

Plaintiff requests the court to find:

First. That the plaintiff and defendant were lawfully married on the 12th day of February, 1873, at the city of Poughkeepsie, in the State of New York.

That at the time of such marriage the plaintiff and defendant were residents of the city of New York and continued to be such residents until the month of January, 1887, when they both removed to the city of Elizabeth, in the State of New Jersey, where they continued to live together as man and wife until the defendant
74 left the State of New Jersey at the time and in the manner hereinafter stated.

I so find. G. L. I.

Second. While the plaintiff and defendant lived together as man and wife, there were born to them two children, whose names and ages were as follows, namely:

Ella Chloise Rigney, born January 2nd, 1874.

Thomas Dwight Rigney, born October 15th, 1876.

That said children are both living and are in the care and custody of the plaintiff.

I so find. G. L. I.

Third. That on or about the 31st day of October, 1882, the defendant began to absent himself from the city of Elizabeth and from his home, and to return thereto only at infrequent intervals; and on or about the 1st day of January, 1883, he wholly abandoned his family and wholly ceased to provide for the support of the plaintiff or her said children, except that on the 18th of March, 1883, the defendant obtained possession of the said Thomas Dwight Rigney and took him to the city of New York, and kept him there until January 22nd, 1884, when his custody was reclaimed by the plaintiff.

And from that time the defendant wholly ceased to provide for the support of the plaintiff or either of her children, and on the 20th of March, 1883, he publicly advertised in the Elizabeth Daily Journal that he would not provide for, nor be responsible for the support of the plaintiff or her daughter, and caused like notice to be served on all the merchants and dealers with whom the plaintiff had been accustomed to trade.

Refused. G. L. I.

75 Fourth. That on the 23rd of April, 1883, the plaintiff filed her bill in the court of chancery in the State of New Jersey for an absolute divorce from the defendant and for alimony upon the ground of the defendant's adultery, a copy of which bill is annexed to the amended complaint in this action, marked Exhibit A.

That process in due form requiring defendant to appear and answer said bill was issued out of the said court of chancery, and the same was duly served upon him by publication in pursuance of the laws of said State and the rules and practice of said court.

I so find. G. L. I.

Fifth. That thereafter and on the 4th of August, 1883, the defendant duly appeared in said action by Wallis & Edwards, his attorneys, thereunto duly authorized, who filed with the clerk of said court a notice of appearance; and the defendant also made answer to said bill and caused the same to be filed in said court.

I so find. G. L. I.

Sixth. That on or about the 18th of May, 1886, the plaintiff, in accordance with the rules and practice of the said court of chancery, duly filed in said court a supplemental bill in said suit, a copy of which is annexed to the amended complaint and marked Exhibit C.

That on the 2nd of May, 1887, an order was duly made by the said court of chancery, a copy of which is annexed to the amended complaint and marked Exhibit D.

I so find. G. L. I.

That in pursuance of said order, and within five days after
76 the same was made, to wit, on or about the 4th of May, 1887, personal service of a certified copy of the said supplemental bill, together with a copy of the said order, was duly made upon the defendant.

Refused. G. L. I.

Seventh. That afterwards and on the 19th of May, 1887, the defendant having made default, and the said supplemental bill having been taken against him *pro confesso*, it was duly referred by an order of the said court to a special master to ascertain and report as to the truth of the allegations of the bill, a copy of which order is annexed to the amended complaint, and is marked Exhibit E.

I so find. G. L. I.

Eighth. Thereupon the special master named in said order proceeded to and did take proof of the facts therein alleged, and on or about the 11th of June, 1887, filed his report, a copy of which is also annexed to the amended complaint and marked Exhibit F.

I so find. G. L. I.

Ninth. That thereafter and on or about the 11th of June, 1887, a final decree was duly made and entered in said suit by the said court of chancery, a copy of which is also annexed to the amended complaint and marked Exhibit G, which decree was duly filed and entered in the said court on the 13th day of June, 1887.

I so find. G. L. I.

Tenth. That by the said decree it was adjudged and decreed that the plaintiff and defendant be divorced from the bond of matrimony on the ground of the adultery of the defendant, and that the marriage between them was thereby dissolved, and each
77 of them freed and discharged from the obligations thereof; and whereby it was also further adjudged and decreed that the custody of the said children, Ella Chloise Rigney and Thomas Dwight Rigney, be and the same was thereby awarded to the plaintiff, their mother, absolutely. And by said decree it was further ordered that alimony *pendente lite* be allowed at the rate of one hundred dollars per month from the filing of the bill to the date of said decree, and that thereafter the defendant pay to the plaintiff the sum of forty-five dollars per week at the termination of each and every week from the date of said decree, June 11th, 1887, for her maintenance and support, and the support, maintenance and education of her said children, and that the defendant pay to the plaintiff

her costs to be taxed and the sum of one hundred and fifty dollars for counsel fee.

Refused. G. L. I.

Eleventh. That this action was commenced in this court to enforce said decree, on the 4th day of August, 1887.

That soon thereafter and on the 18th day of September, 1887, the defendant having due notice of the said decree and acting upon the theory of the validity and binding force thereof, married a woman named Abbie Ahern, with whom he has ever since lived and cohabited as his wife, and he claims to have been justified in entering into such marriage by virtue of said decree; that said marriage was solemnized in the State of New Jersey and also in the State of New York.

Refused. G. L. I.

Twelfth. That the defendant has wholly failed to comply with the terms of said decree in any respect and has failed to pay
78 the amount of alimony directed to be paid by said decree on the costs of said suit, which were duly taxed at ninety-one $\frac{73}{100}$ dollars, and the counsel fee, one hundred and fifty dollars, therein mentioned or any part of any or either of said sums, and there is now due and unpaid, according to the terms of said decree, to the plaintiff, alimony at the rate of one hundred dollars per month from the 23d day of April, 1883, to the 11th day of June, 1887, and the said costs and counsel fee and the sum of forty-five dollars per week from the 11th of June, 1887, up to the present time and continuously thereafter.

I so find. G. L. I.

Thirteenth. That after the commencement of this action and after the defendant had married as aforesaid, acting upon the binding force and validity of the decree of the said court of chancery and in or about the month of January, 1888, the defendant applied for and obtained from the chancellor without notice to the plaintiff an order amending the said decree by striking out from the following sentence in the recitals thereof, namely:

"That said defendant has been guilty of the crime of adultery charged in the bill of complaint and the supplemental bill thereto," the words "bill of complaint and the" and the words "thereto," so as to make the same read as follows:

"That the said defendant has been guilty of the crime of adultery charged against him in the said supplimental bill," but in no other respect amending the same, and directing that said final decree as so amended be re-enrolled at the cost of the defendant.

That said decree was so amended and re-enrolled on the
79 motion and application of the defendant, and that the said decree remains unreversed, unvacated and in full force.

Refused. G. L. I.

Fourteenth. That the court of chancery of the State of New Jersey had jurisdiction of the subject-matter of the action and of the

defendant, and said court had power to make the said decree for divorce and also for alimony.

Refus*al*. G. L. I.

And as conclusion of law I decide and determine:

1st. That the said decree of the court of chancery of the State of New Jersey was and is valid and effectual and binding upon the defendant in all its parts and in all respects.

Refused. G. L. I.

2d. That said decree must be enforced in this State and by this court with the same force and effect as if it were a judgment or decree of this court.

Refused. G. L. I.

3d. That the aforesaid amendment of the said decree having been procured without notice to the plaintiff cannot affect her rights thereunder.

Refused. G. L. I.

4th. That the position taken by the defendant, that the decree was valid so far as to dissolve the bonds of matrimony between plaintiff and defendant, but *un*valid so far as it decrees alimony and costs, is untenable and cannot be sustained.

80 That the decree being conceded to be effectual so far as to dissolve the marriage relation, the power of granting alimony and fixing the amount thereof was within the power of the court as an incident to the decree for divorce.

Refused. G. L. I.

5th. That the defendant having acquiesced in and acted upon the binding force of the decree by marrying again and having applied for and obtained an amendment of the decree and having the same re-enrolled on his motion; and the decree as so amended providing for the payment of the alimony, costs and counsel fee as in the original decree, and the defendant having asked for no other amendment or modification of the said decree, is estopped from denying the validity or binding force of any part of the decree as so amended.

Refused. G. L. I.

6th. The plaintiff *in* entitled to judgment re-affirming the said decree of the court of chancery dated June 11th, 1887, and directing that the same be enforced as a judgment of this court.

And the plaintiff is also entitled to judgment for the sum of — dollars, being the amount of alimony directed to be paid by said decree of the court of chancery up to the date of this judgment, together with the costs and counsel fee mentioned in said decree; and also for the costs of this action, together with an extra allowance of — dollars.

And judgment is hereby ordered and directed accordingly.

Refused. G. L. I.

81 Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Findings of Fact and Conclusions of Law.

I, the undersigned, the justice before whom the above-entitled action was tried at a special term of this court without a jury, do find the following findings of fact and conclusions of law therein:

Findings of Fact.

First. Prior to the eleventh day of June, 1887, the parties to this action were husband and wife.

Second. That on or about the 23rd day of April, 1883, the plaintiff herein, then being a resident and citizen of the State of New Jersey, filed her bill of complaint in the court of chancery of that State, the same being a court of general equity jurisdiction, alleging among other things that, at divers times therein stated, the above-named defendant, then being a resident and citizen of the State of New Jersey, had committed adultery with divers persons therein named, and praying among other things, that the marriage between the said plaintiff and said defendant might be dissolved; that the custody of the children of such marriage might be awarded
82 to the plaintiff; and that the defendant might be adjudged to pay to the plaintiff suitable alimony besides the costs of that suit.

Third. That the above-named defendant appeared to said bill and answered the same, denying each and every of the acts of adultery therein charged, by an answer filed in said suit on the 4th day of August, 1883.

Fourth. That on or about the 18th day of May, 1886, said plaintiff filed her supplemental bill in the said court of chancery of New Jersey against said defendant, alleging, among other things, that at the times and places therein stated, to wit, from the month of August, 1884, to and including the month of April, 1886, the said defendant had committed adultery with a person in said supplemental bill named, and praying, among other things, that by reason of such adultery the marriage between the said parties might be dissolved; the issue of such marriage might be awarded to the complainant therein; and that she might be awarded alimony besides her costs in said suit. That process of subpœna was duly issued upon said supplemental bill directed to said defendant, and was returned unserved because said defendant could not be found within the State of New Jersey, but resided out of that State, and that thereupon an order was made by the chancellor of New Jersey on or about the 2nd day of May, 1887, requiring the defendant to appear and plead, answer or demur to said supplemental bill on or about the 18th day of May then next, and that a copy of said order with a copy of said supplemental bill should within five days thereafter be served personally upon said defendant, or in default of such

service that notice of such order be published as in and by said order directing. That said order and the certified copy of said supplemental bill *was* served on the defendant in the city of New York on
83 the 4th day of May, 1887, but that said defendant never appeared to said supplemental bill or filed any answer thereto in said court of chancery. That such proceedings were had therein that on or about the said 19th day of May, 1887, upon the failure of said defendant to appear or answer said supplemental bill, an order of reference was made by said court of chancery, and upon the coming in of said referee's report and on or about the 13th day of June, 1887, a decree was made and entered by said court in said cause, wherein and whereby it was adjudged that the defendant in said bill had been guilty of the crime of adultery charged against him in said bill of complaint, and the supplemental bill thereto, and thereupon it was adjudged that the parties to said suit, being the parties to this action, be divorced from the bonds of matrimony for the causes aforesaid, and that each of them be freed and discharged from all the obligations thereof. That the custody of the two children of said marriage be awarded to the plaintiff in this action, and that alimony *pendente lite* be allowed to the plaintiff at the rate of $100 a month from the filing of the bill up to the date of the decree, and that, therefore, the said defendant pay to the plaintiff the sum of $45 a week for her maintenance and support, and the maintenance and support of said children, and that the defendant pay to the complainant the costs of said suit and the sum of $150 for counsel fees therein.

Fifth. That said decree of the court of chancery was made and entered in manner aforesaid, and the said decree was thereupon, amended so that it read, "the said defendant has been guilty of the crime of adultery charged against him in the said supplemental bill," and the enrolment of said original decree was thereby vacated and the decree directed to be enrolled as amended, and the same was so enrolled.

84 Sixth. That the above-named defendant was never served with process in New Jersey under said supplemental bill and never appeared therein or answered thereto, and the decree of the court of chancery of New Jersey which was based entirely upon charges of adultery contained in said supplemental bill, did not, under the laws of that State, become binding upon said defendant personally.

Seventh. That the complainant in said suit in the court of chancery in New Jersey duly petitioned said court for an amendment of said amended decree and a re-enrollment thereof by reinstating in said suit the original decree, as it existed therein before the aforesaid amendment, and that after a hearing thereof in said court of chancery said petition was denied.

Conclusions of Law.

I. That the court of chancery of New Jersey, as to the matters alleged in the supplemental bill of complaint filed therein, never

obtained jurisdiction over the defendant so as to render a personal decree against him effectual for any purpose.

II. That personal service of the process of the court of chancery of New York issued under said supplemental bill, not having been made upon the defendant within that State, and he not having appeared to said supplemental bill, the judgment against him *in personam* was unauthorized and void and imposed upon him no liability or responsibility to the plaintiff herein.

III. That the plaintiff's complaint herein should be dis-
85 missed and the defendant is entitled to judgment against said plaintiff without costs.

Let judgment be entered accordingly.

Dated New York, June 6th, 1888.

GEO. *I.* INGRAHAM, *J. S. C.*

At a special term of the supreme court held at the county court-house, in the city of New York, this 6th day of June, 1888.

Present: Hon. George L. Ingraham, justice.

ELLA L. RIGNEY *ag'st* THOMAS G. RIGNEY. } Decree.

This cause having come on for trial before Hon. George L. Ingraham, justice, at a special term of this court, held in the court-house in the city of New York, on the eleventh day of April, 1888, and the court having signed and filed the findings of fact and conclusions of law herein and having directed that judgment be entered in favor of the defendant dismissing the complaint herein upon the merits, but without costs,

Now, on motion of Marsh, Wilson & Wallis, attorneys for the defendant,

86 It is ordered, adjudged, and decreed that the plaintiff's complaint be, and the same is hereby, dismissed upon the merits but without costs.

Enter.

G. L. I.

Endorsed: Filed June 7th, 1888. A copy. (Seal) James A. Flack, clerk.

Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff, *vs.* THOMAS G. RIGNEY, Defendant. } Plaintiff's Exceptions.

The plaintiff excepts to the findings of fact and conclusions of law contained in the decision filed herein as follows:

First. As to the findings of fact contained in the decision:

1. The plaintiff excepts to the fifth finding of fact as contained in said decision and to each and every part thereof.

2. The plaintiff excepts to the sixth finding of fact as con-
87 tained in said decision and to the whole thereof, and the plaintiff particularly excepts to so much of the said sixth finding as is in the following words:

"The decree of the court of chancery of New Jersey, which was based entirely upon the charges of adultery contained in said supplemental bill, did not, under the laws of that State, become binding upon said defendant personally."

3. The plaintiff excepts to the seventh finding of fact as contained in said decision and to each part thereof.

Second. As to conclusions of law:

1. The plaintiff excepts to the first conclusion of law contained in said decision.

2. The plaintiff also excepts to the second conclusion of law contained in said decision and to each and every part thereof, and particularly to so much thereof as is in the following language:

"The judgment against him *in personam* was unauthorized and void and imposed upon him no liability or responsibility to the plaintiff herein."

3. The plaintiff excepts to the third conclusion of law contained in said decision and to each part thereof.

4. The plaintiff excepts to the direction for judgment contained in said decision.

Third. As to refusal to find conclusion of law proposed by defendant:

The plaintiff excepts to the refusal of the court to find and
88 hold as matter of law as proposed by the defendant, that the decree of the court of chancery of New Jersey was effectual to sever the bond of matrimony theretofore existing between the plaintiff and defendant.

Fourth. As to refusal to find as requested by the plaintiff:

The plaintiff excepts to the refusal of the court to find matters of fact and propositions of law contained in plaintiff's request as filed herein as follows:

1. The plaintiff excepts to the refusal of the court to find the third request as to facts, which is in the following language:

"That on or about the 31st day of October, 1882, the defendant began to absent himself from the city of Elizabeth and from his home, and to return thereto only at infrequent intervals; and on or about the 1st day of January, 1883, he wholly abandoned his family and wholly ceased to provide for the support of the plaintiff or her said children, except that on the 18th of March, 1883, the defendant obtained possession of the said Thomas Dwight Rigney and took him to the city of New York and kept him there until January 22d, 1884, when his custody was reclaimed by the plaintiff.

And from that time the defendant wholly ceased to provide for the support of the plaintiff or either of her children, and on the 20th of March, 1885, he publicly advertised in the Elizabeth Daily Journal that he would not provide for her, nor be responsible for the support of the plaintiff or her daughter, and caused like notice to be served

on all the merchants and dealers with whom plaintiff had been accustomed to trade."

89 2. The plaintiff excepts to the refusal of the court to find the following portion of the sixth request as to facts:

"That in pursuance of said order, and within five days after same was made, to wit: on or about the 4th of May, 1887, personal service of a certified copy of the said supplemental bill, together with a copy of said order, was duly made upon the defendant."

3. The plaintiff excepts to the refusal of the court to find the tenth request of facts, which was in the following language:

"That by the said decree it was adjudged and decreed that the plaintiff and defendant be divorced from the bond of matrimony on the ground of the adultery of the defendant, and that the marriage between them was thereby dissolved, and each of them freed and discharged from the obligations thereof; and whereby it was also further adjudged and decreed that the custody of the said children, Ella Chloise Rigney and Thomas Dwight Rigney, be and the same was thereby awarded to the plaintiff, their mother, absolutely; and by said decree it was further ordered that alimony *pendente lite* be allowed at the rate of one hundred dollars per month from the filing of the bill to the date of said decree; and that thereafter the defendant pay to the plaintiff the sum of forty-five dollars per week at the termination of each and every week from the date of said decree, June 11th 1887, for her maintenance and support and the support, maintenance and education of her said children, and that the defendant pay to the plaintiff her costs, to be taxed, and the sum of one hundred and fifty dollars for counsel fee."

4. The plaintiff excepts to the refusal of the court to find the eleventh request, which is in the following language:

90 "That this action was commenced in this court to enforce said decree, on the 4th day of August, 1887.

"That soon thereafter and on the 18th day of September, 1887, the defendant having due notice of the said decree and acting upon the theory of the validity and binding force thereof, married a woman named Abbie Ahern, with whom he has ever since lived and cohabited as his wife, and he claims to have been justified in entering into said marriage by virtue of said decree; that said marriage was solemnized in the State of New Jersey and also in the State of New York."

5. The plaintiff excepts to the refusal of the court to find the thirteenth request as to facts, which is in the following language:

"That after the commencement of this action and after the defendant had married as aforesaid, acting upon the binding force and validity of the decree of the said court of chancery and in or about the month of January, 1888, the defendant applied for and obtained from the chancellor, without notice to the plaintiff, an order amending the said decree by striking out from the following sentence in the recitals thereof, namely:

"That said defendant has been guilty of the crime of adultery charged in the bill of complaint and the supplemental bill thereto,"

the words "bill of complaint and the" and the words "thereto," so as to make the same read as follows:

"That the said defendant has been guilty of the crime of adultery charged against him in the said supplemental bill," but in no other respect amending the same, and directing that said final decree as so amended be enrolled at the cost of the defendant.

91 That said decree was so amended and re-enrolled on the motion and application of the defendant, and that the said decree remains unreversed, unvacated and in full force."

6. The plaintiff excepts to the refusal of the court to find the fourteenth request, which is in the following language:

"That the court of chancery of the State of New Jersey had jurisdiction of the subject-matter of the action and of the defendant, and said court had power to make the said decree for divorce and also for alimony."

And as to conclusions of law:

1. The plaintiff excepts to the refusal of the court to find the first proposition or conclusion of law, which is as follows:

"That the said decree of the court of chancery of the State of New Jersey was and is valid and effectual and binding upon the defendant in all its parts and in all respects."

2. The plaintiff excepts to the refusal of the court to find the second proposition or conclusion of law, which is as follows:

"That said decree must be enforced in this State and by this court with the same force and effect as if it were a judgment or decree of this court."

3. The plaintiff excepts to the refusal of the court to find the third proposition or conclusion of law, which is as follows:

"That the aforesaid amendment of the said decree having been procured without notice to the plaintiff cannot affect her rights thereunder."

92 4. The plaintiff excepts to the refusal of the court to find the fourth proposition or conclusion of law, which is as follows:

"That the position taken by the defendant, that the decree was valid so far as to dissolve the bonds of matrimony between plaintiff and defendant, but invalid as far as it decrees alimony and costs, is untenable and cannot be sustained.

That the decree being conceded to be effectual so far as to dissolve the marriage relation, the power of granting alimony and fixing the amount thereof was within the power of the court as an incident to the decree for divorce."

5. The plaintiff excepts to the refusal of the court to find the fifth proposition or conclusion of law, which is as follows:

"That the defendant having acquiesced in and acted upon the binding force of the decree by marrying again and having applied for and obtained an amendment of the decree and having the same re-enrolled on his motion; and the decree as so amended providing for the payment of the alimony, costs and counsel fee as in the original decree, and the defendant having asked for no other amendment or modification of the said decree, is estopped from de-

nying the validity or binding force of any part of the decree as so amended."

6. The plaintiff excepts to the refusal of the court to find the sixth proposition or conclusion of law, which is as follows:

"That plaintiff is entitled to judgment reaffirming the said decree of the court of chancery dated June 11th, 1887, and directing that the same be enforced as a judgment of this court.

93 And the plaintiff is also entitled to judgment for the sum of — dollars, being the amount of alimony directed to be paid by said decree of the court of chancery up to the date of this judgment, together with the costs and counsel fee mentioned in said decree; and also for the costs of this action, together with an extra allowance of — dollars.

And judgment is hereby ordered and directed accordingly."

Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff and Appellant,
vs.
THOMAS G. RIGNEY, Defendant and Respondent. } Notice of Appeal.

Please take notice that the plaintiff herein, Ella L. Rigney, hereby appeals to the general term of this court from the judgment entered herein with the clerk of the city and county of New York on the 7th day of June, 1888, in favor of the defendant and against the plaintiff, dismissing the complaint without costs and from every part thereof.

Dated New York, June 18th, 1888.

Yours, &c.,

WING, SHOUDY & PUTMAN,
Att'ys for Pl'ff & App'l't.

To Marsh, Wilson & Wallis, Esqs., att'ys for d'f't & resp'd't.
James A. Flack, Esq., clerk of the city and county of New York.

94 New York Supreme Court, Special Term, April, 1888.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Opinion.

Joseph A. Shoudy, for pl'ff; Hamilton Wallis, for def't.

INGRAHAM, *J.*:

It is clear that the court of chancery of the State of New Jersey had power to amend its own decree. A court of general jurisdiction has the absolute control of its own judgment and decrees. It can of its own motion without notice to any one vacate or correct its judgment, and the judgment or decree thus corrected cannot be questioned collaterally.

The right of the plaintiff to recover in this action, therefore, must

the words "bill of complaint and the" and the words "thereto," so as to make the same read as follows:

"That the said defendant has been guilty of the crime of adultery charged against him in the said supplemental bill," but in no other respect amending the same, and directing that said final decree as so amended be enrolled at the cost of the defendant.

91 That said decree was so amended and re-enrolled on the motion and application of the defendant, and that the said decree remains unreversed, unvacated and in full force."

6. The plaintiff excepts to the refusal of the court to find the fourteenth request, which is in the following language:

"That the court of chancery of the State of New Jersey had jurisdiction of the subject-matter of the action and of the defendant, and said court had power to make the said decree for divorce and also for alimony."

And as to conclusions of law:

1. The plaintiff excepts to the refusal of the court to find the first proposition or conclusion of law, which is as follows:

"That the said decree of the court of chancery of the State of New Jersey was and is valid and effectual and binding upon the defendant in all its parts and in all respects."

2. The plaintiff excepts to the refusal of the court to find the second proposition or conclusion of law, which is as follows:

"That said decree must be enforced in this State and by this court with the same force and effect as if it were a judgment or decree of this court."

3. The plaintiff excepts to the refusal of the court to find the third proposition or conclusion of law, which is as follows:

"That the aforesaid amendment of the said decree having been procured without notice to the plaintiff cannot affect her rights thereunder."

92 4. The plaintiff excepts to the refusal of the court to find the fourth proposition or conclusion of law, which is as follows:

"That the position taken by the defendant, that the decree was valid so far as to dissolve the bonds of matrimony between plaintiff and defendant, but invalid as far as it decrees alimony and costs, is untenable and cannot be sustained.

That the decree being conceded to be effectual so far as to dissolve the marriage relation, the power of granting alimony and fixing the amount thereof was within the power of the court as an incident to the decree for divorce."

5. The plaintiff excepts to the refusal of the court to find the fifth proposition or conclusion of law, which is as follows:

"That the defendant having acquiesced in and acted upon the binding force of the decree by marrying again and having applied for and obtained an amendment of the decree and having the same re-enrolled on his motion; and the decree as so amended providing for the payment of the alimony, costs and counsel fee as in the original decree, and the defendant having asked for no other amendment or modification of the said decree, is estopped from de-

nying the validity or binding force of any part of the decree as so amended."

6. The plaintiff excepts to the refusal of the court to find the sixth proposition or conclusion of law, which is as follows:

"That plaintiff is entitled to judgment reaffirming the said decree of the court of chancery dated June 11th, 1887, and directing that the same be enforced as a judgment of this court.

93 And the plaintiff is also entitled to judgment for the sum of — dollars, being the amount of alimony directed to be paid by said decree of the court of chancery up to the date of this judgment, together with the costs and counsel fee mentioned in said decree; and also for the costs of this action, together with an extra allowance of — dollars.

And judgment is hereby ordered and directed accordingly."

Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff and Appellant,
vs.
THOMAS G. RIGNEY, Defendant and Respondent. } Notice of Appeal.

Please take notice that the plaintiff herein, Ella L. Rigney, hereby appeals to the general term of this court from the judgment entered herein with the clerk of the city and county of New York on the 7th day of June, 1888, in favor of the defendant and against the plaintiff, dismissing the complaint without costs and from every part thereof.

Dated New York, June 18th, 1888.

Yours, &c.,

WING, SHOUDY & PUTMAN,
Att'ys for Pl'ff & App'l't.

To Marsh, Wilson & Wallis, Esqs., att'ys for d'f't & resp'd't.
James A. Flack, Esq., clerk of the city and county of New York.

94 New York Supreme Court, Special Term, April, 1888.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Opinion.

Joseph A. Shoudy, for pl'ff; Hamilton Wallis, for def't.

INGRAHAM, *J.*:

It is clear that the court of chancery of the State of New Jersey had power to amend its own decree. A court of general jurisdiction has the absolute control of its own judgment and decrees. It can of its own motion without notice to any one vacate or correct its judgment, and the judgment or decree thus corrected cannot be questioned collaterally.

The right of the plaintiff to recover in this action, therefore, must

rest upon the decree as amended by the chancellor and in existence at the time of the trial.

The only question, however, in this case is whether the court had jurisdiction of the person of the defendant to make the decree directing the payment of alimony, to enforce which this action is brought.

95 At the time the action in the court of chancery in New Jersey was commenced the defendant was a resident of this State; he was not personally served with process within the State of New Jersey, and on the 4th of August he appeared and answered the bill, denying the adultery charged.

His appearance in that action gave the court jurisdiction over his person, and he would be bound by any decree that in that action the court made.

No attempt, however, appears to have been made to bring the issue raised by the bill and answer to trial, but on or about the second of May, 1886, plaintiff obtained leave to file a supplemental bill which recites the original bill, that no testimony had been taken in the case and the issue was undetermined, and the supplemental bill then charged the defendant with various acts of adultery since the filing of the original bill, and asking substantially the same relief as demanded by the original bill.

Upon this supplemental bill an order was granted on May 2nd, 1887, requiring the defendant to appear and plead, demur or answer the supplemental bill on or before May 18, 1887, and directed the service of a copy of the bill on the defendant by publication, and on May 16th, 1887, an affidavit was filed showing that a certified copy of the supplemental bill and a certified copy of the order of publication was served upon the defendant personally in the city of New York on May 4, 1887.

On May 19th, 1887, an order was granted, apparently without notice to the solicitor for the defendant, which recites that the order requiring the defendant to appear and answer the said bill had been duly served as required by the rules and practice of the court; that

96 the defendant had not answered the bill, and ordered that it be referred to a special master to ascertain and report as to the truth of the allegations of the said bill and his opinion thereon *ex parte*.

On June 10th the special master reported that the defendant had committed adultery in the years 1884 and 1885 and upon this report and without notice to or the appearance by the defendant, the decree to enforce which this action is brought was granted. There was no trial of the issues raised by the original plea and answer and no attempt was made to prove any of the allegations contained in the original bill.

No copy of the supplemental bill was served on the defendant or his attorney in the State of New Jersey and he had no notice of the application for judgment.

The plaintiff proceeded as if the supplemental bill was in effect a new action, and on the failure to appear and answer the supplemental bill, took it as confessed and proceeded *ex parte*.

The evidence is undisputed that a supplemental bill filed in such

an action is under the practice in New Jersey an independent proceeding, and until the issue and service of a subpœna thereon the defendant is not in court, and such was the practice of the court of chancery in this State.

See Lawrence *vs.* Bolton, 3 Paige, 205.

And if the supplemental bill was filed without sufficient grounds the defendant must make the objection by plea, answer or demurrer.

It is not necessary to decide whether the service of the subpœna upon the solicitor for the defendant, who had appeared and answered the original bill, would have given the court jurisdiction, as it does not appear that such service was made.

97 I think it is clear that such a decree founded upon the default of the defendant in not answering the supplemental bill and entirely upon the facts alleged in the supplemental bill is not binding upon the defendant personally out of the State of New Jersey. It was granted because the defendant did not appear, not because he had appeared and failed to satisfactorily answer the charges against him, and the service under the order directing the publication of the subpœna did not give the court jurisdiction over the person of the defendant.

The court had therefore no jurisdiction to make a personal decree against him.

Whether or not the decree so far as it dissolved the marriage is valid, it is not necessary to decide, but the defendant being a citizen and a resident of the State of New York at the time the action was commenced, and not a citizen of the State of New Jersey, and the court having acquired no jurisdiction over his person, it is doubtful whether the court had any jurisdiction to make any judgment that would be valid outside the State of New Jersey.

It is clear, however, that the fact that defendant married again does not estop him from claiming that the decree was without jurisdiction. If the decree was absolutely void because of the lack of jurisdiction, the defendant was guilty of bigamy, but there was no act under the judgment that would estop him from claiming that it was invalid.

I am of the opinion, therefore, that the court of chancery had no jurisdiction over the person of the defendant and that the decree directing the payment of alimony cannot be enforced in this State.

The complaint must therefore be dismissed but without costs.

98 At a general term of the supreme court, held in and for the first department, at the county court-house, in the city of New York, on the 9th day of July, 1889.

Present: Hon. Charles H. Van Brunt, P. J.; Charles Daniels, Willard Bartlett, JJ.

ELLA L. RIGNEY, Plaintiff and Appellant,
against
THOMAS G. RIGNEY, Defendant and Respondent.

An appeal having been taken in this cause from a judgment entered herein with the clerk of the city and county of New York on

the 7th day of June, 1888, in favor of the defendant and against the plaintiff, dismissing the complaint without costs, and from every part thereof; and said appeal having been argued and due deliberation having been had, after hearing Joseph A. Shoudy, of counsel for the appellant, and Hamilton Wallis, Esq., of counsel for the respondent, now, on motion of Wing, Shoudy & Putnam, attorneys for the above-named plaintiff,

It is ordered that the judgment appealed from be and *and* the same hereby is reversed and a new trial granted, with costs to the appellant to abide the event.

99 Supreme Court, First Department, General Term, October, 1888.

Chas. H. Van Brunt, P. J.; Chas. Daniels, Willard Bartlett, JJ.

ELLA L. RIGNEY, Appellant,
against
THOMAS G. RIGNEY, Respondent.

Appeal by the plaintiff from a judgment at special term dismissing the complaint after a trial in an action brought to enforce a decree of the court of chancery of New Jersey awarding the plaintiff alimony, counsel fee, and costs in a suit for absolute divorce.

J. A. Shoudy, for appellant; Hamilton Wallis, for respondent.

BARTLETT, *J.:*

The plaintiff sued the defendant in the court of chancery of the State of New Jersey for an absolute divorce, on the ground of adultery. The defendant appeared and answered the original bill of complaint, denying the acts of adultery with which he was charged therein. Subsequently the plaintiff filed a supplemental bill, charging the defendant with other acts of adultery committed by him after the original bill was filed. The defendant was not served within the territorial jurisdiction of New Jersey with any process issued upon this supplemental bill. He was, however, in the State of New York, served with a copy of the said supplemental bill and with an order made by the chancellor of New Jersey, requiring him to appear and plead thereto within a specified time, and pro-
100 viding that in default thereof such decree would be made against him as the chancellor should think equitable and just. Upon the expiration of this time, the defendant having failed to appear in response to said order or to make any answer to the supplemental bill, the case was referred to a master to take testimony, and upon the coming in of his report a decree was made adjudging that the defendant had been guilty of adultery not only as charged in the original bill, but as charged in the supplemental bill, dissolving the marriage between the parties, directing that the plaintiff should have the custody of the children of the marriage, and awarding alimony to the plaintiff *pendente lite* at the rate of $100 per month, from the filing of the bill to the date of the decree, and

thenceforth at the rate of $45 per week for the maintenance and support of herself and the children, together with costs and $150 for counsel fees. It is to recover the alimony, costs and counsel fee due to the plaintiff under this decree that the present action is brought.

Under the law of New Jersey, and under the chancery practice prevailing in that State, as testified to upon the trial of the present case, it seems that the supplemental bill is an independent proceeding, so far as the supplementary matter is concerned; that an appearance to the original bill does not operate as an appearance to the new matter in the supplemental bill; and that to bring the defendant into court, as to such new matter, he must be served with a writ of subpœna issued thereon, unless he appears thereto voluntarily. As he was not served with any subpœna issued on the supplemental bill in the New Jersey divorce suit, the defendant contends that the court of chancery there never obtained any jurisdiction over him to render the decree for the payment of alimony upon which this action is founded. He admits, however, that the decree in that suit was effectual to some extent and for one purpose. It appears that since its rendition he has married a woman other than the plaintiff, so that his position is that the decree is good in New Jersey and
101 everywhere else, so far as it dissolves the marriage contract, but is not enforceable against him personally so far as it commands him to pay alimony. The language of the answer on the subject is as follows: "But this defendant denies that said court of chancery of New Jersey ever obtained jurisdiction of the person of this defendant under said supplemental bill or had any power to enter a personal decree against him, and he denies that such decree, so far as it is a personal decree against this defendant, is of any validity or effect, but he admits that said decree was effectual to dissolve the marriage status existing between him and the plaintiff;" and the defendant goes on in his answer and expressly admits the allegations contained in the eleventh paragraph of the complaint in this action, which are, that since the making of the decree in New Jersey, acting upon the theory of the validity and binding force thereof, the defendant, on the 18th day of September, 1887, married a women with whom he is now living as his wife in the city of New York.

After the final decree was entered in the New Jersey suit, the defendant appears to have been dissatisfied therewith, because it declared him to be guilty of the acts of adultery charged in the original, as well as in the supplemental bill, and he took steps to have it corrected. He caused Messrs. Wallis & Edwards, who described themselves as his solicitors for the purposes of the motion only, to serve a notice upon the solicitior for the complainant (the plaintiff here) that they should apply to the chancellor for an order modifying the final decree, by striking out the words, "The said defendant has been guilty of the crime of adulterycharged against him in the said bill of complaint and the supplemental bill thereto," so as to make that part of the decree read: "The said defendant has been guilty of the crime of adultery charged against him in the said supplemental bill thereto." When the motion thus noticed came

on to be heard, it was granted by the chancellor and the decree was amended on January 31, 1883, by omitting the finding that the defendant was guilty of the adultery charged against him by the original bill; so that the sole adjudication contained in the
102 decree as to the defendant's adultery is that he was guilty as charged in the supplemental bill. In amending the decree, however, no change was made in the provisions relating to alimony.

The learned judge before whom this case was tried at special term dismissed the complaint on the ground that the court of chancery in New Jersey had no jurisdiction to make any personal decree against the defendant. He did not pronounce upon the validity of the defendant's second marriage, but held that the fact that he had married again did not preclude the defendant from questioning the jurisdiction of the New Jersey court so far as it directed him to pay alimony.

That the defendant was in court, in the divorce suit, so far as the original bill of complaint was concerned is not disputed. He had caused his appearance to be entered, and the chancellor had acquired jurisdiction to proceed in the cause, and to render a judgment therein which should not only dissolve the marriage, but charge the defendant personally with the payment of alimony. It does not seem to me that he lost this jurisdiction because the plaintiff subsequently filed a supplemental bill alleging matters which had occurred after the original bill was filed. The suit remained the same suit and the judgment was a judgment in the original action. The filing of the supplemental bill was not the institution of a new action. Certainly, it could not have been deemed so by the chancellor, for the decree, even after the amendment which was made at the instance of the defendant, was based not upon the supplemental bill alone, but upon the original bill as well. This is apparent, not only from the recital as to the filing of the original bill, and the subsequent statement that the decree is made upon the pleadings, but from the provision in regard to the payment of alimony: "And it is further ordered, that alimony *pendente lite* be allowed at the rate of one hundred dollars per month from the filing of the bill up to the date of this order, and that from henceforth the said Thomas G. Rigney pay to the said Ella L. Rigney the sum of forty-five dollars
103 per week at the termination of each and every week from the date of this order, for her maintenance and the education of her said children." The original bill was filed on April 23, 1883. The supplemental bill was filed on May 18, 1886. The decree, as appears from the language just quoted, awarded the plaintiff alimony from the time the bill—that is the original bill—was filed; so that, of the entire amount of alimony which the defendant was directed to pay, more than $3,600 accrued before the supplemental bill was filed at all, and while the suit rested solely upon the original bill, as to which it is conceded that the court had jurisdiction to render a personal judgment against the defendant.

It may be that it was error for the court of chancery to leave this portion of the decree standing, after striking out that part which adjudged the defendant guilty of the acts of adultery alleged in the

original bill; but we have nothing to do with that question. If the provision for the payment of alimony *pendente lite*, prior to the filing of the supplemental bill is erroneous or irregular, the defendant must seek the appropriate relief *to* New Jersey. We have presented to us in this case a decree made in suit in the New Jersey court of chancery in which the defendant voluntarily appeared. That decree directs him to pay money. Not only from its express terms, but by necessary implication from the provisions which it contains in respect to alimony, it is manifest that the decree rests, in part, at least, upon the original bill of complaint. Upon that bill the court concededly possessed the power to make a personal decree against the defendant. Under these circumstances, while he may complain that the judgment was erroneously rendered, I do not think he can successfully question the jurisdiction of the court to render it.

In my opinion the decree for the payment of alimony is enforceable in this State. The judgment should be reversed, and a new trial granted, with costs to the appellant to abide the event.

104 VAN BRUNT, *P. J.*:

I concur in the result, but not in the grounds assigned by Mr. Justice Bartlett for his conclusion.

The defendant admits by his answer that the court in New Jersey had jurisdiction to dissolve the marriage between himself and the plaintiff, and having admitted this fact, he cannot be heard to deny that the court had no power to grant the incidental relief which naturally followed the right to dissolve the marriage. If the court had the jurisdiction to make any part of the decree it was empowered to make the whole decree.

DANIELS, *J.*:

As the defendant appeared in the action, and thereby voluntarily subjected himself to the jurisdiction of the court, he became bound by the decree. The court never lost or was deprived of that jurisdiction. And even if the court proceeded irregularly in making the final decree, that irregularity should have been there corrected. The defendant, having failed to take any proceeding for that end in the court of chancery of New Jersey, cannot resist in this action the enforcement of the decree. The judgment must, therefore, be reversed and a new trial ordered.

105 Supreme Court, City and County of New York.

ELLA L. RIGNEY
against
THOMAS G. RIGNEY.

Please take notice that the defendant above named hereby appeals to the court of appeals from the order made herein at a general term of this court, on the 9th day of July, 1889, and entered herein in the office of the clerk of this court, on the 12th day of said July, reversing the judgment dismissing plaintiff's complaint, entered

herein in said clerk's office on the 7th day of June, 1888, and directing a new trial, with costs to the appellant to abide the event, and from the whole and every part of said order.

And the above-named defendant and appellant hereby stipulates and agrees that if such order be affirmed, judgment absolute shall be rendered against him in favor of the above-named plaintiff and respondent.

Dated New York, August 20th, 1889.

Yours, &c.,

MARSH, WILSON & WALLIS,
Attorneys for Defendant and Appellant.

To Edward F. Reilly, Esq., clerk of the city and county of New York.

Messrs. Wing, Shoudy & Putnam, attorneys for plaintiff and respondent.

106 STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Edward F. Reilly, clerk of the supreme court in and for said county, do hereby certify that the foregoing consists of certified copies of the notice of appeal, the order appealed from and the papers on which the court below acted in making said order.

In witness whereof, I have hereunto set my hand and affixed my official seal this 12th day of September, A. D. 1889.

[SEAL.] EDWARD F. REILLY, *Clerk.*

107 At a special term of the supreme court, held at the chambers thereof, in the county court-house of the city of New York, this 9th day of October, 1891.

Present: Hon. Miles Beach, justice.

ELLA L. RIGNEY }
against
THOMAS G. RIGNEY. }

The defendant above named having duly appealed to the court of appeals from the order made herein at a general term of this court on the 9th day of July, 1889, and entered herein, in the office of the clerk of this court, on the 12th day of said July, reversing the judgment dismissing the plaintiff's complaint, entered herein, in said clerk's office, on the 7th day of June, 1888, and directing a new trial, with costs to the appellant to abide the event, and from the whole and every part of said order, and said court of appeals having duly reversed the order appealed from and affirmed the judgment entered on the decision of the special term, with costs: Now, on reading and filing the remittitur from the said court of appeals and on motion of Wilson and Wallis, attorneys for the defendant and respondent, it is—

Ordered that the judgment of the court of appeals be, and the same hereby is, made the judgment of this court.

Dated New York, October 9th, 1891.

MILES BEACH, *J. S. C.*

[Endorsed:] Supreme court. Ella L. Rigney ag'st Thomas G. Rigney. Order on remittitur. Wilson & Wallis, def't's att'ys.

Supreme Court, City and County of New York.

ELLA L. RIGNEY, Plaintiff,
against
THOMAS G. RIGNEY, Defendant. } Judgment, November 4th, 1891.

Judgment in this action having been rendered in favor of the defendant and against the plaintiff, dismissing the complaint upon the merits, but without costs, at a special term of this court on the 6th day of June, 1888, and the plaintiff having appealed from said judgment to the general term of this court, and said judgment having been reversed and a new trial granted, with costs to the appellant to abide the event, on the 9th day of July, 1889, and the defendant having appealed from the order of the general term to the court of appeals of the State of New York, and the said court of appeals having sent hither its remittitur, filed herein on the 9th day of October, 1891, by which it appears that the said court of appeals has reversed the order of the general term, and has affirmed the judgment of the special term in all things, with costs, and has given judgment absolute to the defendant accordingly, and has remitted the judgment of said court of appeals to this court to be enforced according to law, and this court having, by an order entered herein on the 9th day of October, 1891, ordered that said judgment be made the judgment of this court, and the defendant's costs having been duly adjusted, upon notice, at the sum of $218.53:

Now, on motion of Wilson and Wallis, attorneys for the defendant, it is—

Ordered and adjudged that the said order so appealed from as aforesaid be, and the same hereby is, in all respects reversed and the said judgment of the special term be, and the same hereby is, in all respects affirmed, with costs.

And it is further ordered that the above-named defendant, Thomas G. Rigney, do recover from the above-named plaintiff, Ella L. Rigney, the sum of $218.53, costs as taxed, and that he have execution therefor.

Dated New York, November 4th, 1891.

[Seal of New York.]

LEONARD A. GIEGERICH, *Clerk.*

A copy.

WM. J. McKENNA, *Clerk.*

[Endorsed:] N. Y. supreme court. Ella L. Rigney *vs.* Thomas G. Rigney. Certified copy judgment on remittitur.

113 Supreme Court of the United States, of October Term, in the Year of Our Lord One Thousand Eight Hundred and Ninety-one.

ELLA L. LAING, Formerly Ella L. Rigney, Plaintiff in Error,
against
THOMAS G. RIGNEY, Defendant in Error.

Afterwards, to wit, on the — day of December, in the same term before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Ella L. Laing, by Wing, Shoudy & Putnam, her attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. That the supreme court of the State of New York, on the affirmance and direction of the court of appeals of said State, erroneously disregarded and held for naught the binding force of the judgment and decree of the court of chancery of the State of New Jersey in favor of the plaintiff in error against the defendant in error, which judgment was obtained upon due appearance in
114 court and after jurisdiction duly obtained of the person of the defendant in error and of the subject-matter of the suit.

2. That the said court erroneously held the said decree to be invalid so far as it effected the defendant in error personally, although he had duly appeared in the said court and the judgment and decree was in due form against him personally.

3. That the supreme court and said court of appeals erroneously failed to give such faith and credit to the judgment of the court of chancery of New Jersey as the said judgment has by law or usage in the courts of that State, contrary to the mandate of the Constitution of the United States in that behalf.

And the said Ella L. Laing prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that she may be restored to all things which she hath lost by occasion of said judgment, and that she may have the relief prayed for in her complaint in the said cause.

WING, SHOUDY & PUTNAM,
Att'ys for Pl'ff in Error.

115 [Endorsed:] U. S. Supreme Court. Laing *v.* Rigney. Copy assignment of error. Original filed with clerk city & Co. N. Y. Dec. 26, 1891. Copy rec'd Dec. 26th, '91. Wilson & Wallis, att'y- for T. G. Rigney.

116 Supreme Court of the United States.

ELLA L. LAING, Formerly Ella L. Rigney, Plaintiff in Error,
against
THOMAS G. RIGNEY, Defendant in Error.

Know all men by these presents that we, Ella L. Laing, formerly Ella L. Rigney; Fred. H. Smith, and Edgar L. Laing, are held and firmly bound unto Thomas G. Rigney, of the city of New York, in

the sum of $1,000.00, to be paid to the said Thomas G. Rigney, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 21st day of December, 1891.

Whereas the above-named Ella L. Laing, formerly Ella L. Rigney, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of New York, affirmed in the court of appeals of said State:

117 Now, therefore, the condition of this obligation is such that if the above-named Ella L. Laing shall prosecute her said writ of error to effect and answer all costs and damages if she shall fail to make good her appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

ELLA L. LAING, [SEAL.]
Formerly Ella L. Rigney.
FRED. H. SMITH. [SEAL.]
EDGAR L. LAING. [SEAL.]

Sealed and delivered in presence of—
WILFRED A. CLARK,
[L. S.] *Notary Public, N. Y. Co.*

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

On this 21st day of December, 1891, before me personally appeared Ella L. Laing, Fred. H. Smith, and Edgar L. Laing, to me known to be the individuals described in and who executed the foregoing bond, and they severally acknowledged the execution thereof.

WILFRED A. CLARK,
Notary Public, N. Y. Co.

118 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Leonard A. Giegerich, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Wilfred A. Clark, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 21 day of Dec., 1891.

[SEAL.] WM. J. McKENNA, *Clerk.*

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

On this 21st day of December, 1891, before me personally appeared Fred. H. Smith and Edgar L. Laing, to me known, who, being
119 by me duly sworn, did severally depose and say and each for himself said that he was a re-ident and householder in the State of New York; that he was worth the sum of $2,000.00 over and above all his debts and liabilities and exclusive of property exempt from execution.

FRED. H. SMITH.
EDGAR L. LAING.

[L. S.] WILFRED A. CLARK,
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Leonard A. Giegerich, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Wilfred A. Clark, before whom the annexed deposition was taken, was at the time of taking the same a notary public, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 21 day of Dec., 1891.

[SEAL.] WM. J. McKENNA, *Clerk.*

120 The foregoing bond is approved as to form and amount and sufficiency of sureties December 26th, 1891, as a stay of execution and a supersedeas.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, William J. McKenna, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original remittitur from N. Y. court of appeals, petition, bond, and original writ of error (not filed), Rigney *vs.* Rigney, except the opinion of the supreme court, general term, on file in my office, and that the same are correct transcripts therefrom and the whole of such originals.

In witness whereof I have hereunto subscribed
Seal of New York. my name and affixed my official seal this 4th day of January, 1892.

WM. J. McKENNA, *Clerk.*

121 [Endorsed:] Supreme Court of the United States. Ella L. Laing, formerly Ella L. Rigney, pl'ff in error, *v.* Thomas G.

Rigney, def't in error. Bond for writ of error (original filed with clerk city & Co. N. Y. Dec. 11, '91). Wing, Shoudy & Putnam, attorneys for pl'ff in error, 45–49 William street, New York. Copy rec'd Dec. 26th, '91. Wilson & Wallis, att'ys for T. G. Rigney.

122 UNITED STATES OF AMERICA, *Southern District of New York, City and County of New York,* } *ss:*

Andrew G. Aylwin, being duly sworn, says that he is upwards of 21 years of age and resides in the city of Brooklyn; that he served the annexed citation upon Thomas G. Rigney, whom he knows to be the person to whom the same is directed, on the 28th day of December, 1891, at the stock exchange, on New street, in the city of New York, between the hours of ten and eleven of that day, by then and there delivering to and leaving with the said Thomas G. Rigney a true copy of the said annexed citation and at the same time showing him the original with the signature of his honor Judge Blatchford thereto affixed.

ANDREW G. AYLWIN.

Subscribed and sworn to before me this 29th day of December, 1891.

[Seal Wilfred A. Clark, Notary Public, New York County, N. Y.]

WILFRED A. CLARK,
Notary Public, N. Y. Co.

123 UNITED STATES OF AMERICA, *ss:*

To Thomas G. Rigney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date hereof, pursuant to a writ of error filed with the clerk of the city and county of New York, clerk of the supreme court of said State, wherein Ella L. Laing, formerly Ella L. Rigney, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Blatchford, associate justice of the said Supreme Court, the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and ninety-one.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

124 [Endorsed:] United States Supreme Court. Laing *vs.* Rigney. Citation. (Original to be returned.)

Endorsed on cover: Case No. 14,961. New York supreme court. Term No., 360. Ella L. Laing, plaintiff in error, *vs.* Thomas G. Rigney. Filed January 8, 1892.

Office Supreme Court U. S.
FILED.
NOV 13 1895
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. 79.

ELLA L. LAING, Plaintiff in Error,

vs.

THOMAS G. RIGNEY,

In Error to the Supreme Court of the State of New York.

BRIEF FOR PLAINTIFF IN ERROR.

J. HUBLEY ASHTON,
Counsel for Plaintiff in Error.

McGILL & WALLACE, LAW PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 79.

ELLA L. LAING, FORMERLY ELLA L. RIGNEY,
PLAINTIFF IN ERROR,

vs.

THOMAS G. RIGNEY, DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of New York.

Brief for the Plaintiff in Error.

Statement of the Case.

This is a writ of error for the review of a judgment of the Court of Appeals of the State of New York, Second Division, reversing an order of the General Term of the Supreme Court of New York, First Department, made July 9, 1889, which reversed a judgment of the Special Term, entered June 7, 1888, dismissing the complaint in an action brought by the present plaintiff in error against the present defendant in error, to enforce a decree of the Court of Chancery of the State of New Jersey, dissolving the previously existing marriage relation between the parties, and awarding to the plaintiff in error costs, counsel fees, and alimony.

The Court of Appeals reversed the order of the General Term, and affirmed the judgment of the Special Term in all things, with costs, and, on November 4, 1891, a judgment accordingly was rendered and entered by the Supreme Court in the action. (Remittitur, Record, p. 2; Order on Remittitur, Judgment on same, *ib.*, pp. 60, 61.)

The case was decided by the *Second Division* of the Court of Appeals of New York, in October, 1891. (Rigney *v.* Rigney, 127 N. Y., 408–416.)

The decision reversed the General Term of the Supreme Court, held by Justice Van Brunt, P. J., and Justices Daniels and Bartlett, all of whom delivered opinions, and sustained the action of Justice Ingraham, at the Special Term, in dismissing the complaint. (Opinions at General Term, Record, pp. 56–59.)

It appears that these parties were married at the City of Poughkeepsie, in the State of New York, on February 12, 1873, and continued to reside in that State until January, 1877, when they removed to the City of Elizabeth, in the State of New Jersey, and there lived as husband and wife.

They had two children, a girl and a boy, who were fourteen and eleven years old, respectively, at the time of the trial.

In January, 1883, the defendant ceased to support his family, and subsequently abandoned the plaintiff.

The plaintiff continued to reside in New Jersey.

On April 23, 1883, the plaintiff, then being a resident of the State of New Jersey, filed a bill against the defendant in the Court of Chancery of that State, wherein she alleged that the defendant, *whose legal residence was still at the City of Elizabeth*, had committed adultery with several persons on different occa-

sions in the City of New York, and prayed for an absolute divorce and for alimony.

A copy of the bill is annexed to the complaint, in this action, as Exhibit "A." (Record, pp. 7–10.)

On August 4, 1883, the defendant appeared in the suit, by his solicitors and counsel, and filed an answer to the bill on the merits. The answer denied the allegations of adultery in the bill.

A copy of the answer is annexed to the complaint, in this action, as Exhibit "B." (*Ib.*, pp. 10, 11.)

On May 18, 1886, the plaintiff filed a supplemental bill, in the divorce suit, wherein she alleged that the defendant had committed adultery with a person named, in the City of New York, at various times, since the commencement of the suit, and prayed that she might have the same relief against the defendant "as she might have had if the facts stated and charged by way of supplement had been stated in the original bill," and that the marriage be dissolved, and a suitable allowance made to her as alimony.

A copy of the supplemental bill is annexed to the present complaint, as Exhibit "C." (*Ib.*, pp. 12, 13.)

On April 29, 1887, an order was made by the Chancellor of New Jersey, reciting the appearance and answer of the defendant to the original bill, the filing of the supplemental bill, in the suit, setting forth other charges of the same character for which the same relief was prayed, the issuing of a *subpœna* thereon, and that the defendant residing out of the State of New Jersey, process could not be served upon him, and directing that the defendant appear and plead, demur, or answer to the supplemental bill on or before May 18, 1887, or that in default thereof such decree be made against him as the Chancellor should deem equitable and just, and further directing that a copy of the order, with a certified copy of the supplemental bill should, within five

days thereafter, be served upon the defendant personally, or, in default of such service, that notice of the order be published as therein directed.

The order, as filed May 2, 1887, is annexed to the complaint in this action as Exhibit "D." (*Ib.*, p. 14.)

On May 4, 1887, a copy of this order and a copy of the supplemental bill were served on the defendant personally in the city of New York. (Record, p. 20; p. 48; Amended Answer of Defendant in this action, Rec., p. 18, fols. 30–31.)

On May 19, 1887, an order was made by the Chancellor, reciting that due notice of the order of the Court, made on April 29, directing the defendant to appear and answer the said bill on or before May 18, had been duly served, with a certified copy of the supplemental bill, "as in said order, *and by the rules of this Court directed and prescribed*," and that the defendant had not answered to the same within the time limited *by law and said order*, and referring the case to a special master to ascertain and report on evidence as to the truth of the allegations of the said bill and his opinion thereon.

A copy of this order is annexed to the present complaint as Exhibit "E." (Record, pp. 14–15.)

On June 10, 1887, the Special Master reported to the Court that all material facts charged in the bill and supplemental bill were true, and that a decree of divorce should be made as prayed for.

A copy of the Master's report is annexed to the present complaint as Exhibit "F." (Record, p. 15.)

On June 11, 1887, a final decree on this report was rendered by the Chancellor, which was filed June 13, 1887, confirming the report, granting a divorce, and awarding costs, counsel fees, and alimony.

The decree found, "that the said defendant has been guilty of the crime of adultery charged against him in the said bill of complaint and the supplemental bill

thereto," and it was "ordered, adjudged, and decreed that the said complainant, Ella L. Rigney, and the said defendant, Thomas G. Rigney, be divorced from the bond of matrimony for the cause aforesaid, and the marriage between them is hereby dissolved accordingly, and the said parties are hereby freed and discharged from the obligations thereof."

It was further adjudged and decreed that the custody of the children be awarded to the plaintiff, and that the defendant pay alimony *pendente lite* at the rate of $100 a month "*from the filing of the bill up to the date of this order*," and thereafter at the rate of $45 per week, together with the costs of the suit, and the sum of $150 for counsel fees.

A copy of the decree is annexed to the complaint in this action as Exhibit "G." (Record, pp. 16, 17.)

It may be here stated that it appears, by the record, that, in January, 1888, shortly before the trial of this case, which occurred in April, 1888, the defendant, by the solicitors who had appeared for him and filed his answer to the original bill in the divorce suit, applied for and obtained from the Chancellor an amendment of the decree of June 11, 1887, by striking out from the recitals thereof the words "*bill of complaint and the*" and "*thereto*," so as to make the recital read: "and that the said defendant has been guilty of the crime of adultery charged against him in said *supplemental bill*." (Record, p. 21; amended final decree, filed January 31, 1888.)

In all other respects, the amended decree is precisely the same as the original.

These changes were made upon motion of the defendant's solicitors, as stated, and the decree was re-enrolled by the procurement and at the cost of the defendant. (*Ib.*, pp. 31, 32.)

No modification of the decree was asked for by the defendant as to alimony or costs.

The decree as it stands amended awards the costs and counsel fees sought to be recovered in this action.

The plaintiff had no actual notice of the application for the amendment, but the Chancellor refused to revoke it on her petition. (*Ib.*, p. 29; pp. 33, 34, 35.)

On August 4, 1887, Mrs. Rigney brought this action in the Supreme Court of New York upon the final decree of the Court of Chancery of New Jersey, in the suit of *Rigney* v. *Rigney*, to recover the amount awarded by the decree for alimony and costs, no part of which had been paid. (Record, p. 3.)

The amended complaint, served December 3, 1887, set forth the proceedings and final decree of June 13, 1887, in the divorce suit, as they are above stated.

It alleged that the defendant, acting upon the theory of the binding force of the final decree of the Court of Chancery of New Jersey, married one Abbie Ahern, September 18, 1887; that he claimed to have been justified in so doing by virtue of said decree; and that said marriage was solemnized in both the States of New York and New Jersey. (Record, p. 6, fol. 10.)

These allegations are expressly admitted by the answer (Record, p. 19, fol. 32, admitting the allegations in paragraph 11 of complaint.)

The complaint averred that on or about the 4th day of May, 1887, a copy of the said supplemental bill and a copy of the order for publication thereof were duly served upon the defendant, in the City of New York, by delivering said copies to him personally. (*Ib.*, p. 6.)

The defendant, in his answer, admitted "the making of the order of May 2, 1887, and the service thereof, and of said supplemental bill upon him," but alleged that

as said service was made in the State of New York, and not in the State of New Jersey, the Court of Chancery of New Jersey, by such service, obtained no jurisdiction to make any personal decree against him on the supplemental bill. (*Ib.*, p. 18, fol. 31.)

The case came on for trial, in April, 1888, before Mr. Justice Ingraham, at Special Term, and was tried without a jury.

The plaintiff introduced in evidence an exemplified copy of the decree of the Court of Chancery of New Jersey in the divorce suit, consisting of the papers, copies of which are annexed to the amended complaint in this action, and marked Exhibits "A," "B," "C," "D," "E," "F," and "G." (Rec., p. 20.)

The counsel for the defendant introduced in evidence, under objection and exception by the plaintiff, an exemplified copy of the new enrolment of the decree of the Court of Chancery of New Jersey, which is printed in the record (pp. 21–23).

The defendant then called as a witness Mr. Daniel M. Dickenson, the Chief Clerk of the Court of Chancery, who was also a Solicitor in Chancery, and the author of a work on Chancery Practice, and endeavored to prove by him that it was essential that a *subpœna* should be issued upon the supplemental bill and duly served on the defendant. (Rec., pp. 23–29.)

But the witness testified as follows:

"The practice in New Jersey is, perhaps, a little peculiar in that respect. If the decree contains the fact that he was served, *prima facie*, he was; if it does not, why, then, there is no decree against him binding him personally; but *so long as the decree stands against him in our State, why, of course, it is a good decree.*"

The witness further testified, on cross-examination, that so long as the decree remained in form, it was a valid decree in that State.

Also, that the issuing (filing) of the *supplemental bill* did not do away with the *original bill;* but that the defendant remained in court *on the original bill and on his original appearance.* (Record, p. 26, fol. 44.)

He also testified that the supplemental bill was *part and parcel of the original suit, when recognized by the Chancellor.*

Also, that a decree of the Court of Chancery, when pronounced, was "the law of the State recognized in all its parts."

The witness further testified that there was no *statute* in terms requiring the issuing of a *subpœna* on the supplemental bill, nor could he refer to any *decision* requiring a *subpœna* to be issued. (Rec., p. 27.)

The Statutes of New Jersey, as contained in the Revision, respecting the Court of Chancery, were offered in evidence by the plaintiff, and are to be deemed part of the case. (Record, p. 27, fol. 47.)

Rule 216 of the Court, prescribing, it would seem, 15 days as the time for the service of process to appear to a bill of revivor, or *supplemental bill*, was introduced, and the plaintiff offered to show that the Chancellor, in fixing the time within which the appearance should be made to the supplemental bill, referred to that rule. (*Ib.*, p. 28; pp. 30, 31.)

It also appeared that by Rule 220, ten (10) days were the time allowed and limited for filing objection to any order or decree. (*Ib.*, p. 30.)

It was testified by Mr. Fay, the solicitor of the plaintiff, in the divorce suit, that the Chancellor signed the order of April 29, 1887, "filling in the time himself in the original." (*Ib.*, p. 29)

The defendant then examined as a witness Mr. Wallis, of the firm of Wallis & Edwards, who had appeared as solicitors for the defendant in the divorce suit. He stated that "in September (1887) last he prepared a notice of an application to the Court of Chancery, in the suit of *Rigney* v. *Rigney*, for a *modification of the decree in that suit, to make it conform to the proof*," which was served on Mr. Fay, who had acted in the suit as the solicitor for the plaintiff. (Rec., p. 31.)

The witness stated, on cross-examination, that as a matter of fact the order amending the decree was signed in January, 1888. (*Ib.*, p. 42.)

The plaintiff here proved that the seat in the New York Stock Exchange held by defendant, was worth $18,000.

Judge Ingraham, upon his findings of fact and conclusions of law, directed that a judgment be entered in the case in favor of the defendant, dismissing the complaint upon the merits, but without costs. (Record, pp. 47–49.)

His opinion is in the record (pp. 53–55).

The legal conclusions of Judge Ingraham were:

1. That the Court of Chancery of New Jersey, as to the matters alleged in the supplemental bill, never acquired jurisdiction over the defendant, so as to render a personal decree against him effectual for any purpose.

2. That personal service of the process of the Court of Chancery, issued under the supplemental bill, not having been made upon the defendant within the State, and he not having appeared to said bill, the judgment against him *in personam* was unauthorized and void, and imposed upon him no liability or responsibility to the plaintiff.

Exceptions were filed by the plaintiff to the findings of fact and conclusions of law, and to the refusal of the Court to find as requested. (Rec., pp. 49–53.)

On June 7, 1888, a judgment was entered dismissing the complaint upon the merits, but without costs. (*Ib.*, p. 49.)

On July 9, 1889, the General Term, by its order, reversed this judgment, and granted a new trial. (*Ib.* 56.)

Three opinions, all in favor of reversal, were delivered. (*Ib.*, pp. 56-60; 53 Hun., 457.)

On August 20, 1889, the defendant appealed to the Court of Appeals, and it was stipulated that if the order of the General Term was affirmed, judgment absolute should be rendered for the plaintiff. (*Ib.*, pp. 59, 60.)

The Court of Appeals reversed the order of the General Term, and affirmed the judgment of the Special Term, with costs. (*Ib.*, p. 2.)

The opinion of the Court was delivered by Follett, Ch. J. The gist of it would seem to be that as the defendant was not served with a new *subpœna*, issued on the supplemental bill, within the State of New Jersey, the decree for alimony and costs, rendered June 11, 1887, was a nullity in that State, and, therefore, void, in the State of New York.

The judgment of the Court of Appeals having been made the judgment of the Supreme Court, a final judgment was entered in the Supreme Court, on November 4, 1891, reversing the order of the General Term, and affirming the judgment of the Special Term, with costs. (*Ib.*, p. 61.)

The plaintiff then obtained the present writ of error, which was allowed by Mr. Justice Blatchford.

Assignment of Errors.

I. The Court of Appeals of the State of New York, and the Supreme Court of said State, on the affirmance and direction of the said Court of Appeals, erroneously disregarded and held for naught the binding force of the de-

cree of the Court of Chancery of New Jersey, in the said divorce suit, in favor of the plaintiff in error and against the defendant in error, which decree was obtained upon the due appearance of the defendant in error in court, and after jurisdiction duly obtained of his person and of the subject-matter of the said suit.

II. The said Courts of the State of New York erroneously held the said decree of the Court of Chancery of New Jersey to be invalid so far as it affected the defendant in error personally, although he had duly appeared in the said Court of Chancery, and the decree was in due form against him personally.

III. The said Courts of the State of New York erroneously failed to give such faith and credit to the said decree of the Court of Chancery of New Jersey as the same has by law or usage in the Courts of that State, contrary to the mandate of the Constitution of the United States in that behalf.

IV. The Court of Appeals of the State of New York erred in affirming the judgment of the Special Term of the Supreme Court of that State dismissing the complaint in this action to enforce the said decree of the Court of Chancery of New Jersey, made on or about June 11, 1887, for the payment of alimony and costs by the defendant in error to the plaintiff in error, and in not affirming the order of the General Term of the said Supreme Court reversing the said judgment of the Special Term, dismissing the said complaint, on the ground that the said Court of Chancery had jurisdiction to render the said decree for alimony and costs against the defendant in error, and that the same was valid and enforceable against him in and by the Courts of the State of New York.

V. The said Court of Appeals erred in affirming the judgment of the Special Term of the said Supreme Court,

dismissing the complaint in this action, on the ground that the Court of Chancery of New Jersey, under the law of that State, acquired no jurisdiction to render a decree for alimony and costs on the supplemental bill in the said divorce suit, enforceable in that State against the defendant in error, and erred in not holding that under the law of New Jersey the said decree of June 11, 1887, so far as rendered on the said supplemental bill, was valid and enforceable against the defendant in error personally in and under the law of the State of New Jersey.

VI. The said Court of Appeals erred in not deciding that the said decree of the Court of Chancery of New Jersey for alimony and costs in the said divorce suit, which was valid and enforceable against the defendant in error in that State, was equally valid and binding upon him and enforceable against him in and by the Courts of the State of New York.

VII. The said Court of Appeals erred in not deciding that the motion of the defendant in error in the said divorce suit to modify or amend the recital in the said decree of the Court of Chancery of New Jersey, as rendered by it, was not a general appearance to the said supplemental bill, and the proceedings thereon and thereunder, in the said Court of Chancery, and that he was thereby concluded from any further questioning of the said decree.

VIII. The said Court of Appeals erred in deciding that the defendant in error, by his motion to amend or modify the recital in the said decree of the Court of Chancery of New Jersey, in the said divorce suit, was not estopped to deny, in this action, the validity and binding force of the said decree for the payment of alimony and costs by him to the plaintiff in error.

IX. The said Court of Appeals erred in deciding that the defendant in error was not estopped to deny, in this action, the validity and binding force of the provision in the said decree of June 11, 1887, directing the payment of alimony and costs by him to the plaintiff in error, by his claim that the said decree dissolved the marriage between him and her, and his subsequent marriage to another woman.

X. The Court of Appeals erred in not affirming the order of the General Term of the Supreme Court, reversing the judgment of the Special Term dismissing the complaint in this action, and in not rendering judgment absolute against the defendant in error in favor of the plaintiff in error, with costs.

ARGUMENT.

First.

It was not denied below that the Court of Chancery of New Jersey had jurisdiction of the subject-matter of the original and supplemental bills, in the divorce suit, upon which the decree, involved in this action, was rendered, and had power, in a suit for a divorce, in decreeing a divorce, to award alimony, maintenance, and costs to the wife.

1. Mrs. Rigney, in her original bill, filed April 23, 1883, alleged that she was and remained an inhabitant of the State of New York with her husband until January, 1877, when she removed with him to the City of Elizabeth, in the State of New Jersey, where she had ever since resided, and that her husband had also been an inhabitant of the City of Elizabeth from January, 1877, until March 18, 1883, when he left her and went to the City of New York, and that *his legal residence was still at the City of Elizabeth, in the State of New Jersey.*

The adultery charged was alleged to have been committed, in New York, in January, February, and March, 1883. (Record, p. 8.)

The defendant, in his answer, admitted that his wife resided, and had resided, since January, 1877, at the City of Elizabeth, and alleged that on March 18, 1883, he went to the City of New York to reside, after requesting her to come with him, which she refused to do. (*Ib.*, p. 14.)

Mrs. Rigney, when she filed her supplemental bill, was a resident of the City of Elizabeth, in the County of Union, and State of New Jersey, and she stated that her complaint was made for the causes set forth in the original bill and the supplemental bill. (*Ib.*, pp. 12–14.)

The Court of Chancery of New Jersey thus had jurisdiction of the subject-matter of this suit for a divorce of these parties, under the statutes of the State, and agreeably to the principle, so often declared, that the proceeding for a divorce may be instituted in the State where the wife has her residence, and that the place of the marriage, of the offence, and the residence of the husband are of no consequence. (Revision of the Statutes of New Jersey, p. 314; Barber *v.* Barber, 21 How., 582; Cheever *v.* Wilson, 9 Wall., 108, 124; Pennoyer *v.* Neff, 95 U. S., 714; Ditson *v.* Ditson, 4 R. I., 87; 2 Bish., Mar., Div., and Sep., § 150.)

2. By the statutes of New Jersey the Court of Chancery has the power to award alimony and maintenance whenever a divorce is decreed. (Revision of the Statutes of New Jersey, 1877; Title, "Divorce," pp. 314–319.)

Section 19 of that Title is as follows:

"When a divorce shall be decreed, it shall and may be lawful for the Court of Chancery to make such order touching the alimony and maintenance of the wife, and also touching the care and maintenance of the children,

or any of them, by the said husband, as from the circumstances of the parties and the nature of the case shall be fit, reasonable, and just; and in case the wife is the complainant to order the defendant to give security for such alimony and maintenance," etc.

The provision of the statutes of New Jersey is based upon the general principle of our jurisprudence, that when a woman is divorced from her husband by reason of his misconduct, her right to such suitable maintenance as may be just, having regard to the circumstances of the parties as they exist at the time of the decree, is perfect and absolute.

"When a marriage has been duly solemnized, each of the married parties acquires thereby certain legal rights, as against the other, not to be forfeited unless for some breach of matrimonial duty. What the husband should be made to pay, as the means of the wife's future support, according to all general rules of judgment, must depend upon the facts which create the right to it; and they must be the facts existing and as they exist when the right becomes fixed and perfect. The time of pronouncing the decree is the time at which the right is judicially ascertained and declared. From that moment the marriage relation, and all duties consequent upon it, are ended, except the duty of the husband to make such provision for the support of the wife as the marriage made it his duty to furnish, and gave her a right to demand, having regard to the circumstances of the parties respectively." (Forest *v.* Forest, Bosworth, Ch. J., 9 Abb., Pr. R., 318,319.)

Second.

It was admitted by the defendant in error that the Court of Chancery of New Jersey had complete jurisdiction over him under the original bill, in the divorce suit, and that having been personally served with copies of the supplemental bill and the order of publication of April 29, 1887, in the

City of New York, the Court acquired jurisdiction of his person in respect to the subject-matter of the supplemental bill, and that the decree rendered on June 11, 1887, was valid and effectual to dissolve the marriage relation between him and the plaintiff in error.

1. On August 4, 1883, the defendant in error appeared, by his solicitors and counsel, Messrs. Wallis & Edwards, in the suit for the divorce, instituted by the bill exhibited April 23, 1883, and interposed an answer to the bill on the merits.

The answer was signed by them as "*Solicitors for and of counsel with defendant.*" (*Rec., p. 11.*)

Mrs. Rigney had alleged, in her bill, as seen, that although her husband left her and went to the City of New York, March 18, 1883, his *legal residence* was still at the City of Elizabeth, in the State of New Jersey.

This averment was not denied in the answer of the defendant, who stated merely that on March 18, 1883, "he came to the City of New York to reside." (*Ib.*, p. 11.) And it does not appear, in the case, that, when the suit was begun, his legal residence was not in New Jersey, and that he was not then subject to the laws of the State, and to the territorial authority of its courts.

But whether his legal residence was then in New Jersey, or in New York, there can be no doubt, of course, that by his appearance and answer to the original bill, in the divorce suit, he submitted and subjected himself to the jurisdiction of the New Jersey Court in the proceeding. (Cooper *v.* Reynolds, 10 Wall., 316; Pennoyer *v.* Neff, 95 U. S., 729.)

After that the Court had jurisdiction not only of the *cause*, but of both *parties* to the cause, with power to proceed and render a decree which should not only dissolve the marriage relation, but charge the defendant with the payment of alimony and maintenance.

2. On May 18, 1886, the supplemental bill was filed, upon discovery, by the plaintiff, that since the filing of her original bill, the defendant had committed adultery with a woman, with whom, it was charged, he was openly living, as her husband, in the City of New York. (Rec., p. 13.)

The defendant was still *in court* in the divorce suit. The Court of Chancery had never lost jurisdiction over him, and it still had the power to grant all or any part of the relief asked by the plaintiff in her bill.

It was not stated where the defendant then resided; but upon its appearing that he did not then reside in the State of New Jersey, and process could not be served upon him therein, and that he had appeared and answered the original bill, and that the issues raised thereby were undetermined, the Court, on April 29, 1887, ordered him to appear and answer the supplemental bill on or before May 18, and that a copy of the order with a copy of the supplemental bill, should, within five days thereafter, be served upon him, personally, or, in default of such service, that notice of the order be published, as prescribed, for the purpose of constructive service thereof upon him. (Record, p. 14.)

On May 4, 1887, *personal service* of copies of the order and the supplemental bill was made upon the defendant in the City of New York. (Record, p. 21; p. 18.)

Upon proof of the service, as thus made, and that the defendant had not answered to the supplemental bill in the time limited by its order, the Court directed that the complainant proceed to take depositions and other evidence before the Master to prove the allegations in the bill, and to bring on the hearing of the cause *ex parte*. (Record, p. 15.)

On June 11, 1887, the Court made its final decree for a divorce and alimony upon the *original bill as well as the supplemental bill*, ordering that alimony *pendente*

lite be allowed "from the filing of the bill up to the date of this order," and that "from henceforth" a weekly sum be paid by defendant for the support of the plaintiff and her children. (Rec., p. 17,)

3. The defendant, in his answer, said that he did not appear or answer to the supplemental bill, and that a decree *pro confesso* was taken against him thereunder, but he admitted that "at the time mentioned in the complaint (June 11, 1887) a *final decree was duly made ana entered in said suit by the Court of Chancery of New Jersey.*" (Record, pp. 18, 19, fol. 31.)

It was not denied that the Court had *jurisdiction* to render the decree upon the *original bill.*

The defendant then proceeded, in his answer, to deny that the Court of Chancery of New Jersey obtained jurisdiction of his person, under the *supplemental bill*, or had power to enter a personal decree against him, and to deny that the decree passed on June 11, 1887, so far as it was a personal decree against him, was of any validity; but he expressly admitted "*that said decree was effectual to dissolve the marriage status existing between him and the plaintiff.*" (Record, p. 19, fol. 31.)

He also admitted that, on the faith of the decree, he had married another woman, in New York, on September 18, 1887, about three months after the decree was rendered by the Court of Chancery.

4. The position thus assumed by the defendant in error in regard to the decree of June 11, 1887, was that the decree was good in New Jersey, and everywhere else, so far as it dissolved the marriage contract, but was an absolute *nullity* in New Jersey, so far as it directed him to pay alimony to the plaintiff in error.

5. It may be for this Court to say whether Mr. Justice Van Brunt, in the General Term of the Supreme Court,

was not right in declaring that the defendant in error having admitted that the Court of New Jersey had jurisdiction to dissolve the marriage, he could not be heard to deny, in the same breath, that the Court had no power to grant the incidental relief which naturally followed the right to dissolve the marriage, and that if the Court had jurisdiction to make any part of the decree, it was empowered to make the whole decree. (Rec., p. 59).

Third.

Dissatisfied with the recital, in the final decree of June 11, 1887, as to the extent of his adultery, the defendant in error, upon his application, obtained from the Court of Chancery an amendment of the recital, confining his guilt to the crime of adultery charged in the supplemental bill, and the decree as in this respect amended, was re-enrolled at his cost. By this application and action, in the divorce suit, the defendant in error conclusively appeared to and submitted himself to the jurisdiction of the Court under the supplemental bill, and to the decree as rendered.

1. On September 9, 1887, Messrs. Wallis & Edwards, the solicitors who had filed the defendant's answer to the original bill, served upon Mr. Fay, who had acted as the solicitor for the plaintiff, in the divorce suit, a notice that they would apply to the Chancellor for an order modifying the final decree of June 11, 1887, so that it should read: "The said defendant has been guilty of the crime of adultery charged against him in the said supplemental bill thereto." The solicitors, in the notice, described themselves as "solicitors of said defendant for the purpose of this motion only." (Rec., p. 32.)

It seems that afterward a draft of a proposed amended final decree was prepared and submitted to the Chancellor by the defendant's solicitors, and that the Chancellor signed the same, without change, on January 31, 1888. (Rec., pp. 38, 42.)

The order preceding the decree of June 11, 1887, as amended, recites that by inadvertence and mistake the decree contained a recital that the defendant had been guilty of the crime of adultery charged in the original bill, although the plaintiff did not attempt to substantiate the charge, and that "due notice of this motion has been given to the solicitor of the complainant, by Wallis & Edwards, who appear as the solicitors of the defendant, for the purpose of this motion only." The order then proceeds: "It is on this 24th day of September ordered that the enrollment of said final decree entered in this cause on the 11th of June, 1887, be vacated, and that the said final decree be amended so as to read as follows." (Rec., pp. 21, 22.)

The only change made in the decree, consists in the omission of the original recital that the defendant has been guilty of the crime of adultery charged in the original bill, thus confining his guilt to "the crime of adultery charged against him in the said supplemental bill." (Rec., p. 23.)

The amended decree reads:

"It is thereupon, on *this 11th day of June, 1887*, by his Honor, Alexander T. McGill, Junior, Chancellor of the State of New Jersey, by virtue of the power and authority of this Court, etc., ordered, adjudged, and decreed that the said complainant, and the said defendant, be divorced from the bond of matrimony for the cause aforesaid, etc. And it is further ordered that alimony *pendente lite* be allowed at the rate of one hundred dollars per month *from the filing of the bill up to the date of this order*, and that from henceforth the

said Thomas G. Rigney pay to the said Ella L. Rigney," etc.

The decree closes :

"And it is further ordered that the said final decree as amended, with the other proceedings in the cause, be re-enrolled at the cost of the defendant."

Record, pp. 21–23.

2. The decree of June 11, 1887, as amended, is based, in part, at least, upon the original bill, in the suit, as appears from the unchanged recital as to the filing of the original bill, and the subsequent statement that the decree is made upon the pleadings, as well as the unchanged provision in regard to the payment of alimony *pendente lite* from the time the original bill was filed, April 23, 1883, to the date of the decree, June 11, 1887.

3. The final decree, in its present form, was thus entered and re-enrolled upon the application of the defendant in error, as the defendant in the cause, and he is bound everywhere by its order in respect to the alimony and maintenance to be paid to the plaintiff in error.

Fourth.

The decree of the Court of Chancery of New Jersey, rendered June 11, 1887, allowing alimony and costs to the plaintiff in error, and ordering the payment of the same to her by the defendant in error, is a judgment of record, to which, under the Constitution of the United States, full faith and credit must be given by the Courts of the State of New York.

1. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records,

and proceedings shall be proved and the effect thereof." (Constitution of the United States, Article 4, section 1.)

"And the said records, and judicial proceedings, so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken." (Revised Statutes, § 905; Act May 26, 1790, ch. 11, 1 Stat., 122.)

This Court, speaking by Mr. Justice Wayne, in the leading case of *Barber* v. *Barber* (21 How., 582, 591), said:

"The parties to a cause for a divorce and for alimony are as much bound by a decree for both, which has been given by one of our State Courts having jurisdiction of the subject-matter and over the parties, as the same parties would be if a decree had been given in the Ecclesiastical Court of England. The decree in both is a judgment of record, and will be received as such by other Courts. And such a judgment or decree, rendered in any State of the United States, the Court having jurisdiction, will be carried into judgment in any other State, to have there the same binding force that it has in the State in which it was originally given. For such a purpose both the equity Courts of the United States and the same Courts of the States have jurisdiction."

See, also, Cheever *v.* Wilson, 9 Wall., 123; Bennett *v.* Bennett, Deady, 299.

By the provisions of the Constitution and Statutes of the United States, therefore, the present decree for alimony is entitled to the same force and effect against the defendant in New York as it has in New Jersey. (Mills *v.* Duryee, 7 Cr., 481; Maxwell *v.* Stewart, 22 Wall., 77; Green *v.* Van Buskirk, 7 Wall., 139; Cooper *v.* Reynolds, 10 Wall., 308; Chicago and Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 622.) ※

2. The record of the decree is a record of a Court of general equity jurisdiction as found by the trial court,

※ Huntington v. Attrill, 146 U.S., 657, 666, 683, 684; Carpenter v. Strange, 141 U.S., 87, 103.

and it is to be presumed, until the contrary appears, that the Court had jurisdiction to make the decree as rendered in the cause. (Rec., p. 47; Settlemier *v.* Sullivan, 97 U. S., 446; Knowles *v.* Gaslight Co., 19 Wall., 58.) And the decree is not re-examinable on the merits, nor impeachable for fraud in obtaining it, the Court having jurisdiction of the cause and parties, in a Court of another State. (Christmas *v.* Russell, 5 Wall., 290, 305; Thompson *v.* Whitman, 18 Wall., 457.)

3. The Courts of New York are *bound* to give the present decree as much force and effect against the defendant as it has in New Jersey. The decree shows on its face that the plaintiff filed her bill and supplemental bill in the same cause, and defendant appeared and answered the bill, and duly received actual notice of the supplemental bill, and the proceedings and order of the Court therein for his appearance and answer to the supplemental bill in the time limited by law. The decree itself thus shows that the defendant was brought within the jurisdiction and authority of the Court in New Jersey in accordance with the law of the land. As the Court in New Jersey thus had the right to exercise authority over the defendant in respect to the subjects-matter of the present decree, agreeably to the principles of the public law existing among the States, in 1790, and the Fourteenth Amendment of the National Constitution, the Courts of New York are *bound* to give the decree, as rendered, the same faith and credit that it has in New Jersey. (D'Arcy *v.* Ketchum, 11 How., 165, 176; Green *v.* Van Buskirk, 5 Wall., 307, 7 Wall., 139; Thompson *v.* Whitman, 18 Wall., 464; Pennoyer *v.* Neff, 95 U. S., 729, 733.)

The Constitution and laws of the United States require the courts of a State to give full force and effect to a personal judgment or decree of a Court of another

State, agreeably to the law of the latter, where the defendant was duly notified or summoned, or voluntarily appeared in the cause. Such a judgment or decree is in due course and due process of law, and imposes a personal liability, which must be enforced by the Courts of the other States of the Union. It is entitled to the same faith and credit as a domestic judgment.

4. It was not found, as a fact, by the trial court, that the defendant in error was domiciled or resided in New York, or out of the State of New Jersey, when the original bill in the divorce suit was filed, or when he entered his appearance to the bill. (Rec., p. 47.)

But wherever he was domiciled or resided, at that time, having submitted himself to the authority of the Chancery Court by his voluntary appearance to the bill, no Court of another State can have the right, under the Constitution, to refuse to give full faith and credit to the decree of the New Jersey Court, in respect to the payment of alimony, on the ground that the defendant in error was not served with a *subpœna* issued on the supplemental bill, in New Jersey, or did not voluntarily appear to that bill.

The Courts of every other State of the Union are bound to give the proceedings and every part of the decree on the original and supplemental bills, in the suit, the same effect which the Courts of New Jersey accord to them. (Green *v.* Van Buskirk, 5 Wall., 307, 7 Wall., 139; Crapo *v.* Kelly, 16 Wall., 637.)

Having originally submitted himself to the jurisdiction and authority of the Chancery Court, in the suit, by his appearance to the original bill, due process of law did not require the personal service of new process of *subpœna* upon the defendant in error in New Jersey, or that he should choose to appear to the supplemental bill, in pursuance of the order served on him

personally in New York, in order that he should be personally bound by the decree for alimony, in the Courts of the other States of the Union.

Fifth.

The Court of Appeals erred in affirming the judgment of the Special Term dismissing the complaint in this action to enforce the decree of the Chancery Court of June 11, 1887, in the divorce suit, directing the payment of alimony by the defendant in error. The Court should have affirmed the order of the General Term and rendered judgment absolute for the plaintiff in error on the ground that the Chancery Court had jurisdiction to render the decree, and that the same was enforceable in New York.

1. The third conclusion of law of the trial Court was that the complaint be dismissed, and the defendant is entitled to judgment against the plaintiff without costs. (Rec., p 49.) The plaintiff duly excepted to this conclusion. (*Ib.*, p. 50.)

The plaintiff asked the Court, in her *14th* request, to find that the Court of Chancery had jurisdiction of the subject-matter of the divorce suit and of the defendant, and power to make the decree of June 11, 1887, for divorce and also for alimony, and as conclusions of law to decide that the decree was and is valid and effectual and binding on the defendant, and should be enforced in New York with the same force and effect as if it were a judgment or decree of the New York Court. (*Ib.*, pp. 45, 46.)

The trial Court refused the request, and plaintiff duly excepted. (*Ib.*, pp. 46, 52.)

She also asked the Court to decide, as a conclusion of law, that she "is entitled to judgment reaffirming the said decree of the Court of Chancery, dated June 11,

1887, and directing that the same be enforced as a judgment of this Court."

The Court refused this request, and plaintiff duly excepted. (*Ib.*, pp. 46, 53.)

The Court of Appeals reversed the order of the General Term and affirmed the judgment of the Special Term in all things, and gave judgment absolute for the defendant accordingly. (*Ib.*, p. 61.)

The broad question of the jurisdiction of the Chancery Court to make the decree, as rendered, against the defendant was thus raised by the plaintiff upon the record for the determination of the Court of Appeals.

2. The Special Term admitted that defendant's appearance to the original bill "gave the Chancery Court jurisdiction over his person, and he would be bound by any decree that in that action the Court made;" but it thought the Court had not jurisdiction to make a personal decree against him on the supplemental bill; and as it supposed the decree of June 11, 1887, was made entirely on the supplemental bill, the conclusion was that the Court was without jurisdiction to render that decree. (Opinion, Ingraham, J., Rec., pp. 54, 55.)

Mr. Justice Bartlett, in the General Term, on the other hand, pointed out that the decree rested, in part, at least, on the original bill, to which the defendant had voluntarily appeared, and not entirely on the supplemental bill, which was not the institution of any new suit, and that as the Court had acquired jurisdiction over the defendant by his voluntary appearance to the original bill, it had jurisdiction and power to make the decree, as rendered against the defendant, in the divorce suit, and that the decree was, therefore, enforceable in New York. He said:

"The defendant had caused his appearance to be entered, and the Chancellor had acquired jurisdiction to

proceed in the cause, and to render a judgment therein which should not only dissolve the marriage, but charge him with the payment of alimony. It does not seem to me that he lost this jurisdiction because the plaintiff filed a supplemental bill alleging matters which had occurred after the original bill was filed. The suit remained the same suit, and the judgment was a judgment in the original action. The filing of the supplemental bill was not the institution of a new action. Certainly, it could not have been deemed so by the Chancellor, for the decree, even after the amendment, made at the instance of the defendant, was not based upon the supplemental bill alone, but upon the original bill as well.

"This is apparent, not only from the recital as to the filing of the original bill, and the subsequent statement that the decree is made upon the pleadings, but from the provision in regard to the payment of alimony. * * * It may be that it was error for the Court of Chancery to leave this portion of the decree standing, after striking out that part which adjudged the defendant guilty of the acts of adultery alleged in the original bill, but *we have nothing to do with that question.* If the provision for the payment of alimony *pendente lite*, prior to the filing of the supplemental bill is *erroneous* or *irregular*, the defendant must seek the appropriate relief in New Jersey. * * *

We have presented to us, in this case, a decree made in a suit in the New Jersey Court of Chancery in which the defendant voluntarily appeared. That decree directs him to pay money. Not only from its express terms, but by necessary implication from its provisions in respect to alimony, it is manifest that the decree rests, in part, at least, upon the original bill. Upon that bill, the Court concededly possessed the power to make a personal decree against the defendant. Under these circumstances, while he may complain that the decree was erroneously rendered, I do not think he can successfully question the jurisdiction of the Court to render it. In my opinion the decree for the payment of alimony is enforceable in this State." (Opinion, Bartlett, J. Rec., pp. 58, 59.)

3. Agreeably to this view of the proper construction and the basis of the decree for alimony of June 11, 1887, which is undoubtedly the correct one, the Court below should have reversed the judgment of the trial court on the ground that as the New Jersey Court had jurisdiction over the defendant, by his appearance to the original bill, in the divorce suit, it had power to make the decree for alimony, as rendered against him, in the suit, and that the decree was, therefore, to be enforced by the Courts of New York.

4. The defendant could not claim to be aggrieved by anything erroneous or irregular in the decree, in its present form, which he himself procured to be entered in that form. But apart from this, no error or irregularity in the record of the decree could help him in his effort to get rid of its obligation in this action.

The doctrine is axiomatic that whenever the question of the validity of the proceedings, in a cause, arises in any collateral suit, the party will be held bound by them to the same extent as if in all respects the Court had proceeded according to law. (Cooper *v.* Reynolds, 10 Wall., 308; Cornett *v.* Williams, 20 Wall., 226; White *v.* Crow, 110 U. S., 183; Bank of U. S. *v.* Moss, 6 How., 31, 40; Miller *v.* U. S., 11 Wall., 300; Galpin *v.* Page, 18 Wall., 365; Cuddy, petitioner, 131 U. S., 284; Kinnier *v.* Kinnier, 45 N. Y., 542; *Ex parte* Kellogg, 6 Vt., 509; Carter *v.* Walker, 2 Ohio St., 339; Levan *v.* Millholland, 114 Pa. St., 49; Clark *v.* County Court, 55 Cal., 199; Freeman on Judgments, § 135.)

The principle is stated by Mr. Justice Woods, delivering the opinion of the Court in *White* v. *Crow*, (110 U. S., 183, 188,) where the question was whether the rendition of a judgment before the time for filing the defendant's answer had expired made the judgment void:

"We are of opinion that it does not; that its rendition was simply erroneous and nothing more. The Court

having the jurisdiction to render the judgment, and having rendered it, the law, when the judgment is collaterally attacked, will, make all presumptions necessary to sustain it. (*Grigon's Lessee* v. *Astor*, 2 How., 319.) The defendant being in Court, was bound to take notice of its proceedings, and might have corrected the error at any time during the term. It did not move to set the judgment aside. It filed no answer. The presumption, therefore, which the law makes is either that it consented to the submission of the case before the time for answer expired, or that it subsequently waived the error by not seeking to correct it. * * * We must assume the judgment to be valid and binding until reversed in a direct proceeding."

The Court of Appeals of New York, by Church, Ch. J., in *Kinnier* v. *Kinnier* (45 N. Y., 542) said: "A judgment of a sister State can not be impeached by showing irregularities in the forms of proceedings or a non-compliance with some law of the State relating thereto, or that the decision was erroneous. Jurisdiction confers power to render the judgment, and it will be regarded as valid and binding until set aside in the Court in which it was rendered."

The Supreme Court of California, in *Clark v. Superior Court of Lassen County* (*55 Cal., 199*), declared that if a Court, after acquiring jurisdiction, were to render judgment without trial or an opportunity for hearing, the judgment would not be void, but only erroneous, and the only remedy would be by appeal.

5. The defendant was in court, and bound to take notice of the proceedings in the divorce suit, but he never asked the Court to annul or set aside the decree or appealed from it as erroneous or irregular. It is not necessary, however, to resort to any legal presumption that he thus intended to waive any error or irregularity he might be able to indicate in the rendition of the

decree of June 11, 1887. He did, in fact, waive every such error or irregularity when he had the recital in the decree changed to suit himself, and caused the decree to be enrolled, in its present form, as a final decree on the original and supplemental bill in the divorce suit.

6. As the record thus discloses a final decree resting on the original as well as the supplemental bill, rendered by a court of competent jurisdiction after the voluntary appearance of the defendant to the original bill, in the suit, the courts of the State of New York, in any view of the subject, are bound to assume the decree to be valid and binding on him until reversed in a direct proceeding.

Sixth.

The Court of Appeals erred in affirming the judgment of the Special Term of the Supreme Court dismissing the complaint in this action, on the ground that the Court of Chancery of New Jersey, under the law of the State, acquired no jurisdiction to render a decree for alimony and costs on the supplemental bill enforceable in that State against the defendant in error, and that such decree was ineffectual and void in the State of New Jersey. The Court should have held that, under the law of New Jersey, the decree of June 11, 1887, so far as rendered on the supplemental bill, was valid and enforceable against the defendant in error personally in that State.

1. The ground or basis of the judgment of the Court of Appeals, affirming the judgment of the trial Court, dismissing the action on the decree of June 11, 1887, was, as stated in its opinion, that the trial Court had "found

that under the law of New Jersey and the practice of its Court of Chancery jurisdiction to render a decree for alimony and costs on the supplemental bill, enforceable in that State against the defendant, could not be acquired without the service of a new *subpœna* in the State, or by his appearance in the suit subsequent to the filing of the supplemental bill." (Rigney *v.* Rigney, 127 N. Y., 415.)

The 6th finding of the trial Court, supposed to be referred to by the Court of Appeals, was as follows: "That the defendant was never served with process in New Jersey under said supplemental bill, and never appeared therein or answered thereto, and the decree of the Court of Chancery of New Jersey, which was based entirely on charges of adultery contained in said supplemental bill, did not, under the *laws* of that State, become binding upon said defendant personally." (Rec., p. 48, fol. 84.)

There is nothing in this finding, it will be observed, about "the practice of the Court of Chancery."

The plaintiff excepted to the whole of the 6th finding. (Rec., p. 50, fol. 87.)

She, also, excepted to each of the conclusions of law of the trial Court, based on that finding. (*Ib.*)

She, also, excepted to the refusal of the Court to find, as requested, that the Court of Chancery had jurisdiction of the defendant, and power to render the decree for divorce, and also for alimony. (*Ib.*, p. 52, fol. 91.)

2. The decision of the Court of Appeals against the validity of the decree in New Jersey, was thus apparently based upon the 6th finding of the Special Term of the Supreme Court, which was excepted to by the plaintiff at the trial, as stated.

If the finding was unsupported by legal evidence, as it is maintained it was, the Court of Appeals erred in not

disregarding it, and erred in holding that under the law of New Jersey the Court of Chancery acquired no jurisdiction to render a decree for alimony and costs on the supplemental bill, enforceable in that State against the defendant, and that the decree of June 11, 1887, as rendered on the supplemental bill, was void in the State of New Jersey.

It is well settled, in New York, that exceptions to alleged findings of facts, when they are unsupported by evidence, and to the refusals to find facts, when they are established by undisputed proof, present questions of law reviewable in the Court of Appeals, upon which the Court may reverse if the facts involved are material. Findings, not sustained by evidence, are legally erroneous, and, if excepted to, may be corrected by the Court of Appeals. (Bedlow *v.* N. Y. Floating Dry Dock Co., 112 N. Y., 263; Putnam *v.* Hubbell, 42 N. Y., 106; Stilwell *v.* Mutual Life, 72 N. Y., 385; Fox *v.* Moyer, 54 N. Y., 125; Thomson *v.* Bank of Brit. N. Am., 82 N. Y., 1.)

3. The 6th finding of the trial Court was not only unsupported by evidence, but the evideuce in the cause showed conclusively that the decree in question, so far as based on the supplemental bill, did, under the laws of New Jersey, become binding on the defendant personally, with the same effect as if he had been served with process issued on that bill within the limits of the State.

The expression, "*the laws of the State*," in the 6th finding, must be interpreted to mean the statutes of the State, but it will make no difference if it should be supposed to include the decisions of the Courts of the State.

The defendant adduced and proved no statute or judicial decision, in New Jersey, providing or declaring

that service of a subpœna, within the State, is an indispensable prerequisite to the rendition of a personal decree, on a supplemental bill, against a resident or non-resident defendant, in a suit for divorce, or any other suit, in the Court of Chancery.

Mr. Dickenson, called by the defendant as an expert, testified expressly that there was no statute of New Jersey in terms requiring the issuing of a *subpœna* on any supplemental bill, and he could cite no judicial decision in the State requiring a *subpœna* to be issued on such a bill. (Rec., p. 27.)

Nor was the witness able to specify any New Jersey statute, which, in his *opinion*, required such process to be issued on a supplemental bill in any suit in the Court of Chancery of that State.

The plaintiff objected to the questions asked Mr. Dickenson, on the part of the defendant, on the ground that as the jurisdiction of the Court of Chancery was regulated by statute, he was incompetent to testify to the matters as to which he was interrogated, and the plaintiff duly excepted to the overruling of her objections. (Rec., pp. 24,25.)

The witness said that the statute conferring jurisdiction on the Court of Chancery is found in the revision of New Jersey, 1877, under the head of "Chancery acts," as he thought was the title. (Rec., p. 27.)

It is only the unwritten or common law of a foreign state that can be proved by the testimony of experts, or those acquainted with that law. The statute law or written law of another State must be proved by a copy properly authenticated. (Church *v.* Hubbart, 2 Cranch, 187, 236; Ennis *v.* Smith, 14 How., 400; Pierce *v.* Indseth, 106 U. S., 551; Hill *v.* Packard, 5 Wend., 389; Chanoine *v.* Fowler, 3 Wend., 176.)

As the jurisdiction of the New Jersey Court is defined by statute, and does not depend on unwritten or com-

mon law, Mr. Dickenson's *opinion* upon the question as to how and when that Court acquires jurisdiction over a defendant to an original or supplemental bill was not legal evidence in this cause.

He did not purport to testify, however, as we understand what he said, that where the Court has already acquired jurisdiction over a defendant, who is absent from the State, and residing elsewhere, when a supplemental bill is filed, in the suit, the service on him of a new *subpœna* in the State is an indispensable prerequisite to the rendition of a personal decree on such supplemental bill.

The defendant in the divorce suit was proceeded against as an "*absent defendant*," under the laws of New Jersey, and no particle of evidence was offered by him to prove, in this action, that, under those laws, the Court did not obtain jurisdiction over him in respect to the supplemental bill by the personal service made upon him in New York of a copy of the order of the Court of April 29, 1887, and a copy of the supplemental bill.

It is clear, as we submit, that the 6th finding of the trial Court, excepted to by the plaintiff in error, and on which the decision below was founded, was unsupported by any proof on the part of the defendant in error in that Court, and it should have been so held by the Court below.

4. The plaintiff on her part offered in evidence so much of the Revision of the Statutes of New Jersey, published in 1877, as relates to the Court of Chancery, and the same was received, and may be referred to as part of this case. (Rec., p. 27, fol. 47.)

Recurring, then, to that Revision, title "*Chancery*," we find no provision whatever requiring a new *subpœna* to be issued on any supplemental bill filed in the Court of Chancery.

Sections 18 and 19 of that title relate to "*proceedings against non-residents.*"

They provide expressly for bringing a defendant to a chancery suit, residing out of the State, before the Court, without the service on him of a *subpœna* in the State, or his voluntary appearance to the bill.

These sections are as follows:

"18. That in case of a bill filed against any defendant against whom a subpœna or other process to appear shall issue, and such defendant shall not cause his appearance to be entered in such suit, as, according to the practice of said Court, the same ought to be entered, in case such process has been duly served, and it shall be made to appear, by affidavit or otherwise, to the satisfaction of the Chancellor, that such defendant is *out of the State*, or can not, on due inquiry, be found therein, or that he conceals himself within this State, every such defendant shall be deemed and taken to be an *absent defendant*, and thereupon the Chancellor may, by order, direct such absent defendant to appear, plead, answer, or demur to the bill, at a certain day therein to be named, not less than two, nor more than six months from the date of such order; of which order such notice as the Chancellor shall by rule direct shall, within twenty days thereafter, be served personally on such defendant, *by a delivery of a copy thereof to him*, or be published in one or more of the public newspapers printed in this State, for six weeks successively, at least once in every week; and in case of such publication a copy of such notice shall be mailed to such defendant, prepaid, directed to him at the postoffice nearest his residence, or the postoffice at which he usually receives his letters, unless such residence or postoffice be unknown and can not be ascertained on making such inquiries as the Chancellor may, by rule, prescribe in such case, which said notice shall also be published or served in any other manner that the Chancellor may see proper in the same to direct; and in case such *absent defendant* shall not appear, plead, answer, or demur within the time so limited,

and on proof of *personal service*, or of the publication and mailing of said notice, and of the performance of the directions contained in said order, to the satisfaction of the Chancellor, the Chancellor may order and direct that the complainant's bill be taken as confessed against such *absent defendant*, or the Chancellor may, at his discretion, order the complainant to produce depositions, or other evidence to substantiate and prove the allegations in the bill, and thereupon such decree shall be made as the Chancellor shall think equitable and just; and that the provisions of this section shall apply to petitions and bills for divorce.

"*19. That any defendant upon whom such notice is served as herein directed, shall be bound by the decree in such cause as if he were served with process within this State;* but in cases where the same shall be published and sent by mail, if such defendant shall make oath that he did not receive the same, and that it did not in any way come to his knowledge, within twenty days after the time within which it was directed to be served; or in cases where *actual service* is sworn to, if it shall be made to appear that such service was not made, the Chancellor may, before executing such decree, proceed to take security."

It thus appears distinctly that, under the law of New Jersey, an "absent defendant" may be and is subjected to the jurisdiction of the Court of Chancery by the service on him personally, out of the State, of a notice of an order of the Chancellor, directing him to appear and answer the bill within a time limited, and that when so served with such order he "*shall be bound by the decree as if he were served with process within the State.*"

By the Revision of 1877, suits for divorce are begun by filing a petition, or bill, when the Clerk shall, if required, make out a certified copy thereof to be served on the defendant, and issue a citation for him, which is served by delivery of a copy thereof, with a certified copy of the

bill, to the defendant personally, or by leaving the copies at his dwelling place. If the citation is returned "served," and the defendant does not answer within the time limited, the Court may order that the complainant take proof to substantiate the bill, and bring on the hearing of the cause *ex parte*. As respects an *absent defendant*, the statute provides for bringing him or her before the Court by the personal service on the party, out of the State, of a copy of an order of the Chancellor, directing him or her to answer the bill, within a time limited, or by the publication of such order in a newspaper published in the State; and on proof of such personal service or publication of such order to answer the bill, the Court may direct the complainant, if the defendant has not filed his or her answer in the time limited, to prove the allegations in the bill, and the complainant may then proceed *ex parte*, and bring on the hearing of the cause. (Revision of Statutes of New Jersey, 1877, pp. 314-319.)

It is manifest, therefore, that, under the laws of New Jersey, it was not necessary that the defendant in error should be served with a new *subpœna*, within the State, to enable the Court of Chancery to render a personal decree against him for alimony and costs, on the supplemental bill, which would be valid and enforceable in New Jersey.

He was an "absent defendant," who had duly appeared to the original bill, and, under the laws of the State, he was properly subjected to the jurisdiction of the Court in respect to the matter of the supplemental bill by the actual service on him, in the City of New York, of a copy of the order of the Chancellor of April 29, 1887, and a copy of the supplemental bill.

The trial Court should have found, under the evidence, that by the laws of New Jersey, the Court of

Chancery acquired and had complete jurisdiction over the defendant, and power to render a personal decree against him for alimony and costs, on the supplemental bill, which was valid and effectual in that State.

In this case it was proper for the Chancery Court to fix the time within which the defendant should be required to answer the supplemental bill, and it did so by its order of April 29, 1887. Whether the time should be longer or shorter, was, of course, a mere question of practice for the Court. No statute prescribed the time to answer a supplemental bill against an absent defendant, and it would seem that the Chancellor adopted the rule applicable to cases of revivor.

5. The general rule of equity procedure and practice in respect to the process of *subpœna* on supplemental bills, is stated by this Court, speaking by Mr. Justice Field, in the case of *Shaw* v. *Bill* (95 U. S., 15.)

The Court, answering an objection that a *subpœna* had not been issued upon the supplemental bill, in that case, said: "The fact that process of *subpœna* was not issued upon the supplemental bill, is of no consequence. *Such process is only necessary when new parties are brought in. The supplemental bill is a mere adjunct to the original bill, and where the parties have already been served, no further subpœna for them is required.*"

The presumption would be that the law of New Jersey conforms to the general principle of the law of equity procedure thus stated so distinctly by this Court.

As seen, there is nothing in the statutes of New Jersey or the decisions of its Courts, which indicates a departure from this principle in that State.

Agreeably to the general principle of chancery law, an order or rule to answer the supplemental bill, served personally on the defendant, was sufficient, the defendant having already appeared to the original bill in the suit.

It is well settled that a supplemental bill, when filed, is in addition to the original bill, and becomes a part of it, and the whole is to be taken as one amended bill. (Mitford's Pl., ch. 1, § 2; Feigler *v.* Feigler, 7 Md., 537; Gillett *v.* Hall., 13 Conn., 434.)

It is conceived that a theory that by the general rules of equity procedure, a defendant who has appeared to an original bill in chancery, can be brought before the court on a supplemental bill only by the service upon him of a new *subpœna* in the territorial limits of the State, and that he is at liberty to baffle the court in the administration of justice in the cause by absenting himself from the territory of the State, is without foundation, in principle or authority.

It is not surprising, therefore, that in the opinion of the learned court below no reference is made to any reported decision in New Jersey, or elsewhere, which gives countenance to such a theory of the limitation of the power of a court of equity over a defendant who has appeared to an original bill in respect to the matter of a supplemental bill in the suit, under the general principles and rules of chancery procedure and practice.

After the court has once acquired jurisdiction of the parties under the original bill, it is competent for it to proceed under a supplemental bill, as an addition to the original bill, upon notice to the defendant of the supplemental bill, and without process of *subpœna*, issued upon that bill, and served on the defendant within the territorial jurisdiction of the State.

If the defendant is a non-resident of the State at the time of the filing of the supplemental bill, such notice may be given to him at the place of his residence in another State, and any decree on the original and supplemental bills, in the suit, after such notice, is binding upon him in the State in which it is rendered, and in the other States of the Union.

Seventh.

The decree of the Court of Chancery of New Jersey for alimony and costs, so far as based on the supplemental bill, in the divorce suit, which is valid and enforceable against the defendant in error in that State, as seen, is equally binding upon and enforceable against him in the State of New York.

1. The defendant in his answer rested his defense on the ground of the alleged invalidity of the decree, so far as rendered on the supplemental bill, under the "*laws and practice of the State of New Jersey*," and there was no claim or pretense, in the answer, that if the decree was valid and enforceable against him personally in New Jersey, it was *not* conclusive as a personal decree, by which he is bound, in the State of New York. (Answer, Rec., pp. 18, 19.)

Nor was it denied by the Courts below that if the decree in question, was enforceable against the defendant in error in New Jersey, it was conclusive and binding on him in New York.

The Court of Appeals, in its opinion, said:

"The jurisdiction of the Court of Chancery to render the judgment against the defendant for costs and alimony may be inquired into by the Courts of this State, and whether it had or not is the *only* question presented by the record. * * * This question must be determined by the law of New Jersey, for no greater effect can be given the judgment in this State than would be given to it in the State where rendered." (127 N. Y., 412, 414.)

2. But there can be no doubt that the decree was and is binding on the defendant as well in New York as in New Jersey.

He and his wife were residents and citizens of New Jersey, together, to the time when he chose to leave her

and go to New York to live, when he tacitly *consented* to the exercise of jurisdiction by the proper tribunal of New Jersey, where she continued to reside, in any proceeding she might find it necessary to institute for the dissolution of the marriage, and the determination and enforcement of her rights against him as incidental to the marriage and its dissolution.

When he voluntarily *appeared* to her suit for divorce, he, in effect, *expressly consented* to submit himself to the authority of the Court in New Jersey, and the law governing its jurisdiction over absent defendants, and to be bound by its proceedings and decrees, under the New Jersey law, as completely and effectually as if he had continued to be a resident or citizen of New Jersey.

When he thus appeared to the suit and filed his answer therein, he co-operated with her in the *selection* of the tribunal for the determination of all the rights involved in the controversy.

He knew, or was bound to know, that, under the law of the selected forum, he could be notified of any supplemental bill it might become necessary for his wife to file, in the divorce suit, by the actual or constructive service on him, in New York, of an order of the Court directing him to answer the bill; and when he voluntarily appeared to the divorce suit, he consented and agreed to receive such a notification of any supplemental bill, filed by her in that suit, and to be bound by the action of the Court on the bill in pursuance of such a notification.

As to that matter, the Courts of New York can accord to him no greater or other rights than they would accord to a citizen or resident of New Jersey, as an absent defendant, in a divorce suit, instituted in that State; and it can not be pretended that a citizen or resident of New Jersey would not be personally bound, in New York, by a decree for alimony on a supplemental

bill in New Jersey, rendered upon an actual service on him, in New York, of a copy of the bill and an order of the Court directing him to appear and answer the bill.

Each State has the right to provide the means by which its own citizens, or persons resident therein, may be brought before its Courts, for any purpose, and the Courts of other States can have no authority to disregard the means thus provided, and the judgments rendered in pursuance of them. (Harryman *v.* Roberts, 52 Md., 64–75; Henderson *v.* Staniford, 105 Mass., 504; Story, Conflict of Laws, 8th ed., § 586; 2 Freeman on Judgments, § 570; Schibsby *v.* Westenholz, L. R., 6 Q. B., 155; Rouisillon *v.* Rouisillon, 14 Ch. D., 351.)

So when a resident of one State has selected a tribunal in another State for the settlement of a controversy, he acquires a *relation* to that State in respect to the cause which disables the Courts of his own State from disregarding or questioning the procedure whereby the Courts of the other State, under its law, notify the party of proceedings in the cause, and acquire jurisdiction over him in respect to such proceedings.

In New York it was decided that a resident citizen of the State, who as a defendant in a divorce suit, in Texas, moved ineffectually to set aside the service of a citation on him in New York, became bound by the statute law of Texas prescribing the effect of such a proceeding as a general appearance and submission to the jurisdiction of the Texas Court. (Jones *v.* Jones, 108 N. Y., 415, 426.) Having notice of the law of the forum, he became amenable to it.

3. In the present case, the defendant received, agreeably to the law of New Jersey, *actual* notice of the supplemental bill, which was an *adjunct* to the original bill, and a part of the proceedings embraced by the jurisdiction of the Court over the divorce suit.

There is no principle of public or constitutional law, or natural justice, under which a Court in New York could claim the right to allow the defendant to question the personal decree which he voluntarily permitted the Court in New Jersey to render against him on that bill, and which was valid and enforceable against him in that State.

Due process of law, in the case, required at most that he should receive actual notice of the filing of the supplemental bill, in the divorce suit, and have an opportunity to interpose his defense to the allegations of the bill.

The Court in New Jersey had already obtained, by his consent, complete jurisdiction over the suit and the parties, and due process of law did not require that he should be permitted by his personal presence or residence in New York, to disable and prevent the Court from exercising jurisdiction in the supplementary proceedings in the suit.

A State can not send its original process across the border line, and bring a resident of another State before its Court; but the Court of one State may send any necessary notice of a proceeding in a cause to a defendant residing in another State, who has submitted himself to its jurisdiction in that cause, and he will be conclusively bound by such notice, according to its effect under the law of the forum.

4. The principle is well settled that where a Court has acquired jurisdiction of a cause, it retains it for all purposes until the cause is finally determined. The exercise of the jurisdiction may be suspended; but the jurisdiction itself is never suspended. And it has been held that where, in the case of a foreign judgment, the record does not show that any notice was given to the party affected by the action of the Court in thus resum-

ing its jurisdiction, it will be presumed that no such notice, agreeably to the practice of the Court, was necessary, or that if necessary, it was in fact given. (Sanford *v.* Sanford, 28 Conn., 6.)

So, if after a judgment has been rendered the defendant removes to another State, and it is necessary to revive it by *scire facias*, the writ may be served in the mode sanctioned by the laws of the State, and the judgment thereon will have the same effect against the defendant as if he had remained a resident of the State. (Adams *v.* Rowe, 11 Me., 89; Elasser *v.* Haines, 52 N. J. L., 10.)

So, if a resident of one State submits himself to the jurisdiction of a Court of another State, he may be brought before an appellate Court without service of process or notice, in the State, and by such notice, personal or constructive, out of the State, as its law may prescribe for the purpose. (Nations *v.* Johnson, 24 How., 195; Pennoyer *v.* Neff, 95 U. S., 734; Meyer *v.* Hartman, 14 Mo. App., 130.)

5. The Courts of New York are plainly bound by the Constitution to give effect to and enforce this decree.

Eighth.

The Court of Appeals erred in not deciding that the motion of the defendant in error, by his solicitors, in the divorce suit, to amend or modify the decree of June 11, 1887, operated as a general appearance to the supplemental bill, and the proceedings thereon, and concluded him from any further questioning of the decree.

1. The defendant proved, at the trial, that the decree, in its present form, was procured and enrolled upon his

motion, in the divorce suit, for a modification of the recital in respect to the extent of his adultery. (Rec., pp. 31–42.)

The plaintiff's thirteenth request asked the trial Court to find the facts, in respect to this application by him for a modification of the decree, as they were proved by the defendant. (Rec., p. 45.)

She excepted to the refusal of the Court to find that request (*ib.*, p. 51), and excepted to the fifth finding of fact as contained in the decision. (*Ib.*, pp. 48, 49.)

Under the judicial system in New York, as stated above, a refusal to find a fact which is indisputably proved, raises a question of law upon which the Court of Appeals may reverse if the fact is a material one.

The order of the Court by which the decree was amended and directed to be re-enrolled, shows upon its face the character and ground of the motion of the defendant in error. (*Ib.*, pp. 21, 22.)

It recites that the solicitors appear as "the solicitors of the defendant for the purpose of this motion only;" but it is shown that the motion referred to did not purport to challenge the decree upon any *jurisdictional* ground, and challenged it on a *non-jurisdictional* ground alone.

2. It is well settled that whenever such a motion is made the appearance is general, no matter what the parties may call it in their motion.

This Court in *Sugg* v. *Thornton* (132 U. S., 529, 530), referred to the rule as it is expressed by Judge Brewer in *Burdette* v. *Corgan* (26 Kansas, 102, 104), as follows:

"The motion challenged the judgment not merely on jurisdictional, but also on non-jurisdictional, grounds, and whenever such a motion is made the appearance is general, no matter what the parties may call it in their motion. (*Cohen* v. *Trowbridge*, 6 Kansas, 385; *Fee* v. *Big Sand Iron Co.*, 13 Ohio St., 563; *Grantier* v. *Rose-*

crance, 27 Wisconsin, 480, 491; *Alderson* v. *White*, 32 Wisconsin, 308, 309.)

"A party can not come into Court, challenge its proceedings on account of irregularities, and, after being overruled, be heard to say that he never was a party in Court, or bound by those proceedings.

"If he was not in fact a party, and had not been properly served, he can have the proceedings set aside on that ground, *but he must challenge the proceedings on that single ground.*"

The defendant in error, upon this authority, must be deemed to have voluntarily appeared to the supplemental bill, and the proceedings thereon, and waived every possible objection to the decree of June 11, 1887, on any jurisdictional ground, notwithstanding the attempt made to qualify or limit the appearance in the manner stated.

Ninth.

The Courts of Appeals erred in deciding that the defendant in error, by his motion in the divorce suit, was not estopped from questioning the binding force of the decree in respect to alimony and costs.

1. The Court was unable to discover any principle by which he could be held to be estopped to question the right of the Chancery Court to render the decree for alimony and costs in the divorce suit.

But the principle is a very plain one. He denied, in the Courts below, the validity of the decree on the sole ground that he was never a party in Court to the supplemental bill, and if he is now precluded from assuming that position, he is estopped to question the binding force of the decree.

2. There can be no doubt that after challenging the recital in the decree of June 11, 1887, on account of mis-

take or irregularity, as stated, and getting it changed to suit himself, the defendant in error, independently of the technical effect of his motion as an appearance, is estopped to claim, in this action, that the decree was void in any part for want of jurisdiction to render it, or otherwise. (Sugg *v.* Thornton, 132 U. S., 530; Davis *v.* Wakelee, 156 U. S., 680, 691, and cases cited.)

He challenged the decree by his motion on a purely non-jurisdictional ground, and his motion having been allowed, he is concluded and estopped as to any further questioning of the decree in a Court of justice.

Tenth.

The Court of Appeals erred in holding that the defendant in error was not estopped to deny the validity and binding force of the provision in the decree of June 11, 1887, directing the payment of alimony and costs to the plaintiff in error, by his claim that the decree dissolved the marriage between him and her, and his subsequent marriage to another woman.

1. He admitted the averments as to his subsequent marriage in the eleventh paragraph of the complaint. (Rec., pp. 6, 19.) And he maintained, in his answer, that the decree was effectual to dissolve the marriage between him and the plaintiff. (*Ib.*, p. 19.)

He made no effort to set aside the decree on the ground that he had not been served with a *subpœna* on the supplemental bill in New Jersey, because he meant to take advantage of it, so for as it enabled him to marry another woman, and to claim that it was a nullity, so far as it enforced his paramount obligations to the plaintiff on the dissolution of his marriage with her for his adultery, which he admitted was effected by the decree.

The theory is that while his admitted and adjudicated crime gave him the right to marry again, it gave the plaintiff and her children no right to any support from him.

2. Upon the facts, as presented, he cannot question the validity of the decree as an adjudication of the right of the plaintiff to the alimony directed to be paid by it, under an equitable principle of wide and diversified application, and which public policy and the interests of society require should be applied in such a case as this.

A party who has taken a beneficial interest under a will, is thereby held to have confirmed and ratified every other part of the will, and can not be heard to set up any right or claim of his own, however legal or well founded it otherwise may be, which would defeat the full operation of the will. (Bigelow on Estoppel, 578; Sherman *v.* MacKeon, 38 N. Y., 275.)

So, a party is estopped to deny the sufficiency of service by the sheriff, when, with knowledge that it was defective, he receives the proceeds of the sale. (Southard *v.* Power, 21 Iowa, 188.)

So, one who accepts the benefit of a judgment can not assign error on it or appeal from it. (Buchman *v.* Atwood, 44 Ill., 183; Murphy *v.* Spalding, 46 N. Y., 556.)

The Court, by Folger, J., in the latter case said: "The judgment entered upon the report of the referee determines that the plaintiff was not entitled to a conveyance, but was to damages for non-conveyance. The plaintiff, however, could appeal from any specified part of it. But the Appellate Court can not properly reverse the judgment as to the part specified by the plaintiff and allow the part not complained of by him to stand. If, then, the plaintiff has elected to accept the judgment so far as it is in his favor, he can not appeal from it so far as it is not."

Much less can a party who has taken advantage of the provisions of a decree, attack it collaterally.

The order for the payment of costs, counsel fees, and alimony was a mere incident to the final decree for a divorce, and the defendant in error can not be heard

to question that part of the decree, after accepting and acting upon the part which he regarded as beneficial to him.

Having used the decree for the purpose of another marriage, of course, no Court in New Jersey would hold that he was not estopped to deny the validity of the provision for the payment of alimony. Under the Constitution and the Act of Congress, he must be held to be estopped to question the validity of that provision of the decree when it is sued upon in a Court of another State.

Eleventh.

The judgment of the Court of Appeals, and the judgment rendered thereon by the Supreme Court, should be reversed, with costs, and the case should be remanded to the Supreme Court with directions to affirm the order of the General Term, reversing the judgment of the Special Term, dismissing the complaint, and to render and enter a judgment absolute against the defendant in error in favor of the plaintiff in error, with costs.

When the appeal was taken by the defendant in error to the Court of Appeals, the usual stipulation was given, that if the order of the General Term, reversing the judgment of the Special Term, dismissing the complaint, "be affirmed, judgment absolute shall be rendered against him" in favor of the present plaintiff in error. (Rec., p. 60.)

Accordingly, upon the reversal by this Court of the judgment below, the Supreme Court should be directed, it is submitted, to render a judgment absolute against the defendant in error in favor of the present plaintiff in error, with costs.

J. HUBLEY ASHTON,
Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
FILED.
OCT 29 1895
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 79.

ELLA L. LAING,
Plaintiff in Error,

versus

THOMAS G. RIGNEY,
Defendant in Error.

Brief on Behalf of Defendant in Error.

HAMILTON WALLIS,
Of Counsel.

C. G. Burgoyne, Walker and Centre Streets, N. Y.—1895.

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ELLA L. LAING,
Plaintiff in Error,

VERSUS

THOMAS G. RIGNEY,
Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Statement.

This action was commenced in the Supreme Court of the State of New York to recover from the defendant in error certain costs, counsel fees and alimony which had been awarded to plaintiff in error by the decree of the Court of Chancery of New Jersey, in a suit pending therein, wherein the plaintiff in error was the complainant, and the defendant in error was the defendant. The action was tried at a Special Term of the Supreme Court of the State of New York, before a Judge without a jury, and resulted in a judgment dismissing the plaintiff's complaint (p. 49). An appeal was taken from the judgment so entered to the General Term of the Supreme Court, and the judgment of the Special Term was reversed in the latter Court, and a new trial awarded to the plaintiff (p. 55). An appeal was then taken, from the order of reversal made by the General Term, to the Court of Appeals of the State of New York, which

Court reversed the order of the General Term and affirmed the order of the Special Term. The decision of that Court was regularly remitted to the Supreme Court, and a judgment in accordance therewith entered November 4, 1891 (p. 61). From this judgment plaintiff in error has sued out the writ of error which brings the case to this Court.

History of the Case.

In February, 1873, the parties to this action were married at Poughkeepsie, in the State of New York, they being then residents of that State, and continued to reside there until January, 1877, when they removed to Elizabeth, in the State of New Jersey. Here both resided until January, 1883, when the defendant here removed to the City of New York, leaving the plaintiff, his wife, a resident of the City of Elizabeth. On April 23, 1883, the plaintiff, then being a resident of the State of New Jersey, filed her bill in the Court of Chancery of that State, praying a divorce *a vinculo* from the defendant, by reason of certain acts of adultery alleged to have been committed by him (Ex. A., p. 7). The defendant appeared in that suit August 4, 1883, and filed his answer to the bill, denying the alleged acts of adultery (Ex. B., p. 10), but the issue thus joined was never brought to trial. Afterwards, and on April 21, 1886, the plaintiff filed her supplemental bill in the Court of Chancery of New Jersey, alleging certain other acts of adultery committed by defendant subsequent to the filing of the original bill, and praying a divorce as before (Ex. C., p. 12). Nothing appears to have been done further than the issuance of a subpœna, under the supplemental bill, until May 2, 1887, when an order was made by the Court of Chancery reciting the issuance and return of the subpœna; that the defendant did not reside in the State of New Jersey; that he had appeared and answered the original bill; that the issues raised thereby were still undetermined; the filing of the supplemental bill and ordering that the defendant appear and plead to the supplemental bill on or before the 18th day of May then next, and in default thereof that such decree should be made against him as the Chancellor should think equitable and just; and, further, that a copy of that order, with a certified copy of the supplemental bill, should, within five days thereafter, be served upon the defendant personally, or in default of such service that it be published as therein provided (Ex. D., p. 14).

Defendant was personally served with a certified copy of the order and supplemental bill in the City of New York May 4, 1887, and on the 19th day of the same month an order was made by the Chancellor reciting the service of the prior order and the supplemental bill as directed; that the defendant had not answered *the same;* and ordering that it be referred to a Master to ascertain and report as to the truth of the allegations of the *said* bill, &c., and that the Master proceed to take depositions and to bring on the hearing of the cause *ex parte* (Ex. E, p. 14).

Pursuant to this order the Master therein named proceeded to take testimony as to the facts alleged in the supplemental bill, and filed his report thereon June 10, 1887, wherein he finds that all the material facts charged in the bill and supplemental bill are true, and advises a decree of divorce (Ex. F, p. 15), which was accordingly entered June 13, 1887 (Ex. G, p. 16). By this decree the defendant was directed to pay alimony to the complainant at the rate of $100 per month from the filing of the bill up to the date of the decree, and thereafter at the rate of $45 per week, and to pay her costs of that suit, to be taxed, and the sum of $150 for counsel fee.

Thereupon the complainant in the chancery suit commenced this action in the Supreme Court of the State of New York against the defendant to recover the amount of such alimony, costs and counsel fees which had accrued up to the date of the action, December 3, 1887. The complaint in that action was answered by the defendant, who set up, among other defenses, that, by the proceedings under the supplementat bill, the Court of Chancery of New Jersey obtained no jurisdiction of the person of this defendant, and that the personal judgment contained in the decree of that Court against him was void (pp. 18 and 19).

While this action was pending in the New York court—it appearing by the New Jersey record that the decree of the Court of Chancery contained certain erroneous recitals—a motion was made on the part of the defendant for an amendment of that decree (p. 31). The motion was heard before the Chancellor, granted by him, and a decree made in the Court of Chancery, vacating the enrollment of the original decree, reciting—"that by inadvertence and mistake the final decree made in this cause by the Chancellor on the eleventh day of June, 1887, contained a recital that the defendant had been guilty of the crime of adultery charged against him in the original bill of complaint, although it appears by the proofs submitted to the Chancellor that the complainant did not attempt to sub-

stantiate the charge of adultery alleged in said original bill" (p. 21), amending the decree by confining it to the allegations of the supplemental bill, and directing its enrollment, as amended, at the cost of the defendant, which was done; whereupon the complainant filed her petition in the Court of Chancery of New Jersey, praying that the amended decree and enrollment thereof might be set aside and the original decree restored (p. 33), which motion was denied (p. 42). The action in the Supreme Court of New York was then brought to trial, and the trial Court found the following state of facts (p. 47):

The filing of the original bill by the plaintiff in the Court of Chancery of New Jersey, she then being a resident and citizen of New Jersey; the appearance by the defendant, and his answer to the original bill; the filing by the complainant of her supplemental bill in said Court; the issuance of the subpœna under the supplemental bill, and its return unserved, for the reason that the defendant resided out of the State of New Jersey; the order to answer and the service of such order, and a copy of the supplemental bill upon the defendant in the City of New York; that the defendant had never appeared to said supplemental bill or filed any answer thereto; the decree of the Court of Chancery divorcing the parties to the suit and awarding to the complainant therein her alimony, costs and counsel fees; the amendment and re-enrollment thereof; the petition of the complainant to the New Jersey Court for the reinstatement of the original decree; the denial of that application; "that the above-named defendant (the defendant in error) was never served with process in New Jersey under said supplemental bill, and never appeared therein or answered thereto, and the decree of the Court of Chancery of New Jersey, which was based entirely upon charges of adultery contained in the supplemental bill, did not, *under the laws of that State, become binding upon the defendant personally*" (p. 48). Upon such facts, the judgment, as already stated, was entered by the Supreme Court of New York.

ARGUMENT.

POINT FIRST. This Court must accept and cannot review findings of fact of the trial Court.

St. Louis vs. Rutz, 138 U. S., 241; Runkle vs. Burnham, 153 U. S., 225.

The trial Court has found as matter of fact (p. 48) as follows: "That the above-named defendant was never served with a process in New Jersey under said supplemental bill, and never appeared therein or answered thereto, and the decree of the Court of Chancery of New Jersey, which was based entirely upon charges of adultery contained in said supplemental bill, did not, under the laws of that State, become binding upon said defendant personally."

The provisions of Article 4 of the Constitution, which require that full faith and credit shall be given in each State to the judicial proceedings of every other State, only require that each State shall give to the judicial proceedings of a sister State the same force and effect that would be given to them in that State (Revised Statues of the United States, Section 905). It being the fact, then, that this judgment of the Court of Chancery of New Jersey was not binding upon the defendant therein personally in that State, no such force could be given to it in the State of New York.

POINT SECOND. The decree of the New Jersey Court, so far as it sought to charge the defendant therein personally with alimony, costs and counsel fees, was of no force or validity either in New Jersey or elsewhere, and was not a judgment protected by the provisions of the Constitution of the United States.

The facts in relation to that decree were not disputed. To the original bill filed in the Court of Chancery, the defendant had appeared and answered and raised by his answer an issue of fact, which could not be disposed of except by a trial, where he would

have a right to be heard. To the supplemental bill, filed three years afterwards and before any trial had been had of the issues raised by the original bill, charging acts of adultery which were alleged to have occurred since the filing of the original bill, the defendant neither appeared nor answered, nor was any process ever served upon him within the State of New Jersey. Whatever jurisdiction the New Jersey Court obtained, so far as the supplemental bill was concerned, was by the service upon the defendant of an order to plead, and a copy of the supplemental bill in the City of New York, in the State of New York. At the expiration of the time limited by that order, an order was made taking the bill as confessed against the defendant, and directing that the case proceed *ex parte* (Ex. E, p. 14); the evidence adduced was confined to the allegations of the supplemental bill (p. 21), and upon such proofs the decree was entered by the New Jersey Court, which, so far as it assumed to award a personal judgment against the defendant, was sought to be enforced by this action in the State of New York. Under the law of New Jersey, as found by the trial Court upon the undisputed evidence, the Court of Chancery of that State could not obtain jurisdiction of a defendant to render a valid judgment against him personally for alimony or costs under a supplemental bill, without service of a new subpœna in that State, or the defendant's voluntary appearance to the supplemental bill. Upon these facts the New York Court of Appeals decided that the New Jersey judgment, so far as it was a money judgment, could not be enforced in that State, and that it was not protected by the provisions of the Constitution of the United States. The opinion of that Court is found reported in 127 N. Y., 412, and is as follows:

"FOLLETT, Ch. J.: The courts of this State are commanded by the Constitution and statutes of the United States to give such faith and credit to the judgment of the Court of Chancery of New Jersey as the judgment has, by law or usage, in the courts of that state (Const. U. S., art. 4, § 1; U. S. R. S., § 905). The jurisdiction of the Court of Chancery to render the judgment against this defendant for costs and alimony may be inquired into by the courts of this state, and whether it had or not is the only question presented by the record.

"A suit for a divorce, though not strictly a proceeding *in rem* (Cole v. Cunningham, 133 U. S., 107, 116; Mankin v. Chandler, 2 Brock., 127; 2 Bish. Mar. Div. & Sep., § 20; Drake Att., § 5), is of the nature of such a proceeding, or *quasi in rem*, in so far as it affects the marital status of the parties; but as to alimony and costs, it is a proceeding *in personam* (People v. Baker, 76 N. Y., 78;

2 Bish. Mar. Div. & Sep., § 23 ; 2 Black. Judg., §§ 925, 933). The courts of the United States and those of most of the several states, including New York and New Jersey, hold a divorce to be valid, so far as it affects the marital status of the plaintiff, which is granted by the courts of a state pursuant to its statutes, to one of its resident citizens in an action brought by such citizen against a resident citizen of another state, though the defendant neither appears in the action nor is served with process in the state wherein the divorce is granted (Cheever vs. Wilson, 9 Wall., 108 ; Pennoyer vs. Neff, 95 U. S., 714 ; People vs. Baker, 76 N. Y., 78 ; Doughty vs. Doughty, 28 N. J. Eq., 581 ; Cooley on Const. Lim., 400 ; 2 Bish. Mar. Div. & Sep., § 150 *et seq.*). But the courts of this and some of the States hold that the marital status of such non-resident defendant is not changed by a judgment so recovered, he or she remaining a married person (People vs. Baker, 76 N. Y., 78 ; O'Dea vs. O'Dea, 101 *Id.*, 23 ; Jones vs. Jones, 108 *Id.*, 415 ; Cross vs. Cross, *Id.*, 628 ; Cook vs. Cook, 56 Wis., 195 ; Doughty vs. Doughty, 28 N. J. Eq., 581 ; Flower vs. Flower, 42 *Id.*, 152 ; 2 Bish. Mar. Div. & Sep., § 153 *et seq.*; 2 Black Judg., § 926). In case a defendant is a resident of the State in which the action is brought and amenable to its substantive laws and its laws of procedure, his marital relation may be changed by an *ex parte* judgment of divorce, if constructive service of the process be duly made (Hunt vs. Hunt, 72 N. Y., 217 ; Hood vs. Hood, 11 Allen, 196 ; 2 Black Judg., § 926 ; 2 Bish. Mar. Div. & Sep., § 25). It has been several times held, and the decisions rest upon principle, that a judgment which awards (1) a divorce ; (2) alimony ; (3) costs ; while valid as affecting the marital status of the plaintiff, does not bind the defendant as to sums allowed for alimony and costs in case the judgment be recovered in the State in which the wife is a resident citizen, against her non-resident husband, who has not appeared in the action nor has been served with process in the State in which the action was brought (Beard vs. Beard, 21 Ind., 321 ; Lytle vs. Lytle, 48 *Id.*, 200 ; Middleworth vs. McDowell, 49 *Id.*, 386 ; Prosser vs. Warner, 47 Vt., 667 ; Harding vs. Alden, 9 Me., 140 ; Garner vs. Garner, 56 Md., 127 ; Van Storch vs. Griffin, 71 Penn. St., 240 ; People vs. Baker, 76 N. Y., 78, 87 ; Van Voorhis vs. Brinthall, 86 *Id.*, 18 ; De Meli vs. De Meli, 120 *Id.*, 485 ; 2 Bish. on Mar. Div. & Sep., §§ 35, 36, 79 ; Cool. on Con. Lim., 406 ; 2 Black on Judg., § 933 ; Freem. on Judg., §§ 584, 586 ; Brown on Jurisdiction, 556, 557, 558 *et seq.*).

"No final process is required to enforce that part of the judgment which decrees the divorce ; but the sums allowed for costs and alimony can only be collected in New Jersey by a process against the defendant or his property ; and, like other money judgments, it is not binding on a non-resident defendant, unless he is served with process in the State or appears in the action. A judgment for a deficiency arising upon the sale of mortgaged property is not binding on a non-resident defendant who has not been served with process nor appeared in the action (Schwinger vs. Hickok, 53 N. Y., 280),

and such is the rule in respect to personal judgments rendered against non-resident defendants in actions begun by substituted service in which property is attached (Oakley vs. Aspinwall, 4 N. Y., 514; Durant vs. Abendroth, 97 *Id.*, 132; Cooper vs. Reynolds, 10 Wall., 308; Drake Att., § 5). A judgment for alimony and costs cannot be supported on the ground that they are mere incidents of, and subordinate to, the right to a divorce, and the jurisdiction which is sufficient to support a decree changing the marital status of the plaintiff will not necessarily sustain a judgment for alimony and costs. This brings us to the question whether the defendant's appearance in the Court of Chancery in obedience to the subpœna issued upon filing the original bill of complaint, gave that Court jurisdiction to render a personal judgment against him on the supplemental bill which alleged the commission of a matrimonial offense subsequent to the issue joined on the original bill. This question must be determined by the law of New Jersey, for no greater effect can be given the judgment in this State than would be given to it in the State where rendered (U. S. R. S., § 905; Board of Public Works vs. Columbia College, 17 Wall., 521; Sydam vs. Barber, 18 N. Y., 468). Each State has power to regulate the procedure of its courts and prescribe the rights which plaintiffs may acquire by judgments recovered in its tribunals. The practice and procedure may be established by statute or by the rules and decisions of the Courts, and the Courts of a sister State cannot give greater effect to the procedure adopted than is given to it by the Courts of the State in which the judgment was recovered (Hampton vs. M'Connel, 3 Wheat., 234; Thompson vs. Whitman, 18 Wall., 457; Mackay vs. Gordon, 34 N. J. Law, 286).

"At the date of the filing of the supplemental bill the defendant had ceased to be a resident of the State of New Jersey, as was found by the trial Court, and had become a resident of the State of New York, as was alleged in a petition filed by the plaintiff. The trial Court found upon undisputed evidence that under the Law of New Jersey and the practice of its Court of Chancery that jurisdiction to render a judgment for alimony and costs on the supplemental bill, enforceable in that State against the defendant, could not be acquired without service of a new subpœna in the State, or by his appearance in the action subsequent to the filing of the supplemental bill. The practice of the plaintiff's solicitor, and sanctioned by the Court of Chancery, was strictly in accordance with this finding. The defendant's solicitors resided in the State of New Jersey, but no notice was given them of the application to file the supplemental bill or any of the proceedings taken after it was filed. The plaintiff's solicitor procured a new subpœna to be issued and obtained an order for its service by publication or personally without the State. It does not appear that the solicitors for the defendant were served with the subpœna or with a copy of the supplemental bill or had notice that one had been filed. If the defendant was deemed to be in court for the purposes of the supplemental bill and the proceedings there-

under by virtue of his appearance and answering the original bill, his solicitors would have been entitled to notice of the proceedings subsequent to the filing of the supplemental bill and the entry of a *pro confesso* judgment would not have been authorized.

"It is urged that the omission to serve the defendant with a subpœna within the State after the supplemental bill was filed was a mere irregularity and not jurisdictional. The difficulty with this position is that it was not so found. On the contrary, service within the State was found to be, under the law and practice of the Court of Chancery of New Jersey, an indispensable prerequisite to the rendition of a personal judgment. An act or omission which would be held only an irregularity under the laws of one State may, by the laws of another, be fatal to the right of the Court to proceed to judgment.

"By the rules and decisions of the English Court of Chancery, which have been generally adopted and followed by the equity courts of the United States and of the several States, facts occurring after the filing of an original bill which, if proved, would entitle the complainant to the relief prayed for in the original bill, cannot be introduced therein by amendment, but may be brought before the Court, if at all, by a supplemental bill (Story's Eq. Pldgs., § 332), and when a supplemental bill is filed the defendant must be brought into court by the service of a new subpœna within the State unless he voluntarily appears after the supplemental bill is filed (Barber vs. Beers, 3 Stew., N. J. Dig., 252, p. 400; Lawrence vs. Bolton, 3 Paige, 294).

"It is urged that the defendant, by his subsequent marriage and motion to correct the judgment, recognized its validity in all its parts and is estopped from questioning the right of the Court of Chancery to render a judgment for alimony and costs. We fail to discover on what principle these facts can be held to create an estoppel by conduct, as the plaintiff neither did, nor omitted to do, anything by reason of these acts."

The case, as disclosed by the record, can be looked at in two aspects, in either of which this decision of the Court of Appeals is right:

1. That the Court of Chancery of New Jersey had no jurisdiction over the person of the defendant that would enable it to render a valid personal judgment for a sum of money against him.

This is predicated upon the finding of the Trial Court: *(a)* That the decree of the New Jersey Court was based entirely upon charges contained in the supplemental bill, and did not, under the laws of that State, become binding upon the defendant personally, which fact, as the Court of Appeals has stated, was found upon uncontradicted evidence; and, also *(b)*, upon the thoroughly well-estab-

lished principle that a personal judgment rendered by a State court in an action for money against a non-resident of the State, upon whom no personal service of process within the State was made, and who did not appear, is without validity and is not entitled to the protection of that provision of the Constitution which declares that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State (Pennoyer vs. Neff, 95 U. S., 714; Freeman vs. Alderson, 119 U. S., 188; Sugg vs. Thompson, 132 U. S., 524; Grover & Baker Company vs. Radcliffe, 139 U. S., 294; Wilson vs. Seligmann, 144 U. S., 44; Scott vs. McNeal, 154 U. S., 46).

That the finding of the trial Court in this respect, and the ruling of the Court of Appeals is correct, is fully supported by the proceedings of the New Jersey Court. The taking of the bill *pro confesso;* the subsequent proceedings before the Master without notice to the defendant and without his presence, and the failure to serve notice of the proceedings upon the defendant's solicitors who represented him under the original bill, can only be explained or supported upon the theory of the findings, that the supplemental bill was to all intents and purposes a new and independent proceeding. And the failure to bring to trial the issues raised by the original pleadings, or to attempt to establish any of the allegations contained in the original bill, conclusively establishes the fact that those allegations were not susceptible of proof, and that no decree whatever could be entered against the defendant based upon them, and that the decree, as it itself recites, was one wholly dependent for its validity upon the allegations of the supplemental bill.

II. But if this position is not well taken, if the appearance of the defendant to the original bill can be held in any sense to be a general appearance in the suit, so as to give the Court of Chancery jurisdiction to enter and enforce a personal decree against him therein, whether under the original or the supplemental bill; then, too, the judgment sought to be enforced in this action is invalid.

The Constitution of the United States provides (XIV. Amendment): "Nor shall any State deprive any person of life, liberty or property without due process of law."

Due process of law means not only the service of a subpœna or other original process, but the right of a defendant to be heard in his own defense. It would certainly be a perversion of justice if, after a defendant had been brought into Court by process and had

interposed a pleading which raised an issue of fact, the plaintiff could proceed with the hearing of the cause in the absence of the defendant, without notice to him of such hearing, and without giving him an opportunity to controvert the evidence on the part of the plaintiff. Any such procedure would clearly not be the due process of law required by the Constitution. As was said by the New York Court of Appeals in Stewart vs. Palmer, 74 N. Y., 191, "It may, however, be stated generally that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard and to defend, enforce and protect his rights. *A hearing or opportunity to be heard is absolutely essential.* We cannot conceive of due process of law without this." See also the cases there cited, and to the same effect Scott vs. McNeal, 154 U. S., 46.

But in the case under consideration this opportunity was denied to the defendant. Notwithstanding his appearance and answer—if both bills can be held to be parts of one proceeding—the Court of Chancery expressly directed that the bill should be taken *as confessed*, and that the complaint should proceed with his cause *ex parte* (Ex. E, p. 14). So that, by the express direction of the Court, the defendant was deprived of his right to be heard in his own behalf. But this provision of the Constitution is a restraint equally upon the executive, legislative and judicial branches of the Government (Merry, &c., vs. Hoboken, &c., 18 How. U. S., 272; Scott vs. McNeal, 154 U. S., 45); and therefore the judgment of the Court, having been rendered without such due process of law, was and is a nullity.

So that in whichever way we view this case—whether we consider the supplemental bill as an independent proceeding or as part of the original suit—the judgment sought to be enforced was rendered without that due process of law which is necessary to give it validity.

POINT THIRD. The defendant was in no way estopped or precluded from interposing this defense in this action.

It was objected below that the defendant, having taken advantage of the decree of the New Jersey Court by marrying again, was

precluded from questioning that part of the decree which sought to impose upon him a personal obligation. Of course, there can be no estoppel, as the plaintiff has neither done or omitted to do anything by reason of the defendant's acts.

Nor is there anything in the nature of the case to prohibit the defendant from accepting the position in which he found himself. The defendant was not instrumental, either in putting in motion the New Jersey Court, or in bringing about its final conclusion. Without any co-operation upon his part, that Court had adjudged as follows:

" That the said complainant Ella L. Rigney and the said defendant Thomas G. Rigney be divorced from the bond of matrimony for the cause aforesaid, and the marriage between them is hereby dissolved accordingly, and the said parties *and each of them*, are and is hereby freed and discharged from the obligations thereof " (Ex. G, p. 17).

The New Jersey Court, then, having the cause brought before it by one of its own citizens, had proceeded to reach a conclusion which, under well-settled principles, it had a right to reach. But it went further and attempted to pronounce a judgment which, under equally well-settled principles, it had no power to pronounce. As has been shown, the latter part of this judgment was invalid *ab initio*, but the rest of the judgment was perfectly proper. Its validity could not be questioned. The effect of such a decree is well settled (Middleworth vs. McDowell, 46 Ind., 386; Lytle vs. Lytle, 48 Ind., 200; Prosser vs. Warner, 48 Vt., 667; Pennoyer vs. Neff, 95 U. S., 734; Cooley on Const. Lim., 3d Edition, page 406; Bishop on Mar. & Div., 6th Edition, Vol. 2, Secs. 159, 169, 170). The defendant simply acted as he had a right to act in the position in which his wife, by her own voluntary step, had placed him. He took no advantage of the decree in the sense in which that word is used by the plaintiff in error. By it he was made an unmarried man, whether he would or no, and in marrying again he simply did what every unmarried man has a right to do.

POINT FOURTH. The amended decree of the New Jersey Court is the only decree in that suit.

There can be no question as to the power of the Court over its own judgments and decrees to make them conform to the facts of

any particular case, and as to this particular decree the question of its invalidity is *res adjudicata* between the parties here, as the New Jersey Court upon the plaintiff's petition has refused to vacate the new enrollment and restore the original decree.

POINT FIFTH. The judgment of the Supreme Court of the State of New York, as entered on the remittitur from the Court of Appeals of that State, should be affirmed.

HAMILTON WALLIS,
Of Counsel for the Defendant in Error.

ADDENDA.

Plaintiff's contention that the appearance of defendant's solicitors in the New Jersey Court on their motion to correct the decree, although in terms limited, must be held to be a general appearance in the suit, rendering defendant personally bound thereby, is not supported by the authorities cited. In *Stagg vs. Thornton, 132 U. S., 529*, a defendant, not personally bound by a judgment against his firm, had moved to vacate the judgment as irregular, which motion was denied. The Court held that he was precluded by his act from again attempting to impeach the judgment as a judgment against the firm, but expressly held that it was not a personal judgment against him, because he had not been served within the jurisdiction, notwithstanding his appearance to the motion. So here defendant may be precluded from ever questioning the decree of the New Jersey Court so far as it decreed a divorce, which decree the Court had jurisdiction to make; but if, before the motion, it was not a valid judgment against defendant personally, the making of the motion did not make it such.

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